CALIFORNIA
Water Boards

Edmund G. Brown Jr.
Governor

Matthew Rodriquez
Secretary for
Environmental Protection

Los Angeles Regional Water Quality Control Board

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RECEIVED
August 23, 2017
Commission on State Mandates

August 22, 2017

VIA CSM DROPBOX

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, ORDER NO. R4-2010-0108, 11-TC-01: FILING OF TWO OF THE FOUR ADMINISTRATIVE RECORDS

Dear Ms. Halsey:

As noted in the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) letter dated August 16, 2017, the Board has prepared two of the four administrative records relating to the 2010 Ventura County Municipal Separate Storm Sewer System (MS4) Permit, Los Angeles Water Board Order No. R4-2010-0108. The attached two records are as follows:

- Los Angeles Water Board record for the 2001 Los Angeles County MS4 Permit, Order No. 01-182
- State Water Resources Control Board record for the petition on the 2009 Ventura County MS4 Permit, Order No. R4-2009-0057 (SWRCB/OCC File No. A-2023)

The remaining two Los Angeles Water Board records for the 2009 Ventura County MS4 Permit and the 2010 Ventura County MS4 Permit, as well as the Board's written comments on the test claim, will be submitted by October 13, 2017. Thank you for approving the Board's extension request.

Please let me know if you have any questions. I can be reached at (916) 324-6682 or at Jennifer.Fordyce@waterboards.ca.gov.

Sincerely,

Jennifer L. Fordyce

Jennifer L. Fordyce
Attorney III

cc: Service List via CSM Dropbox

ADMINISTRATIVE RECORD INDEX – STATE WATER RESOURCES CONTROL BOARD

SWRCB/OCC File No. A-2023

Petition of Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and Building Industry Association of Southern California, Inc.
Re:
Waste Discharge Requirements Order No. R4-2009-0057 [NPDES No. CAS004002] for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein

Date	Document Description	Beginning Bates Page #
6/8/2009	Petition for Review of Ventura County Municipal Separate Storm Sewer System (MS4) Permit (Order No. R4-2009-0057) and Memorandum of Points and Authorities In Support of Issues Set Forth in Petition for Review, by Building Industry Legal Defense Foundation, the Construction Industry Coalition on Water Quality, and Building Industry Association of Southern California, Inc. ("Petitioners")	SB-AR-001
6/12/2009	Letter from State Water Resources Control Board to Andrew R. Henderson, Esq. RE: Acknowledgment of Petition Received	SB-AR-251
6/24/2009	Letter from State Water Resources Control Board to Andrew R. Henderson, Esq. RE: Notification of Dismissal of Stay Request Without Prejudice	SB-AR-255
7/2/2009	Letter from State Water Resources Control Board to Andrew R. Henderson, Esq. RE: Complete Petition (30-Day Response)	SB-AR-259
7/7/2009	Supplemental Request for Immediate Stay; Declaration of Dr. Mark Grey In Support of Petitioners' Supplemental Request for Immediate Stay	SB-AR-263
7/13/2009	Letter from Natural Resources Defense Council and Heal the Bay RE: request for an extension of time to respond to petition	SB-AR-277
7/13/2009	Fax/Letter from Teresa Jordan to State Water Resources Control Board RE: support of Petitioners' request for a State Water Board public hearing	SB-AR-278
7/14/2009	Fax/Letter from Teresa Jordan to State Water Resources Control Board RE: comments on petition for review	SB-AR-280
7/16/2009	Letter from State Water Resources Control Board to Noah Garrison RE: Denial of Request for Extension	SB-AR-285

7/23/2009	Fax/Letter from Teresa Jordan to State Water Resources Control Board RE: final comments on petition for review	SB-AR-287
7/29/2009	Letter from Theresa A. Dunham (on behalf of Ventura County MS4 Permittees) to State Water Resources Control Board RE: response to petition for review	SB-AR-309
7/30/2009	Memorandum from Los Angeles Regional Water Quality Control Board to State Water Resources Control Board RE: Administrative Record for SWRCB/OCC File No. A-2023	SB-AR-314
7/31/2009	Fax/Letter from Kenneth C. Farfsing (on behalf of City of Signal Hill and Coalition for Practical Regulation) to State Water Resources Control Board RE: Comment Letter on the Ventura County MS4 Permit-Petition-SWRCB/OCC File A-2023	SB-AR-382
7/31/2009	Letter from Ventura Coastkeeper to State Water Resources Control Board RE: opposition to petition for review	SB-AR-395
7/31/2009	Email/Letter from Noah Garrison (on behalf of NRDC and Heal the Bay) to State Water Resources Control Board RE: Opposition of NRDC and Heal the Bay to Petition for Review; NRDC and Heal the Bay's Request for Official Notice Re Opposition to Petition for Review	SB-AR-398
8/3/2009	Letter from Los Angeles Regional Water Quality Control Board to State Water Resources Control Board RE: Response to Petition for Review and Memorandum of Points and Authorities in Support of Issues Set Forth in Petition for Review	SB-AR-485
8/25/2009	Letter from State Water Resources Control Board to Andrew R. Henderson, Esq. RE: Denial of Stay Request (with attached memorandum RE: Proposed Denial of Stay Request)	SB-AR-493
2/10/2010	Letter from State Water Resources Control Board to Petitioners and interested persons RE: Request for Additional Briefing and Evidence	SB-AR-499
2/24/2010	Letter from NRDC and Heal the Bay to Los Angeles Regional Water Quality Control Board RE: Administrative Record in Ventura County Municipal Stormwater Permit	SB-AR-502
2/24/2010	Letter from State Water Resources Control Board to Petitioners RE: Suspend Deadline for New Submissions	SB-AR-580
3/3/2010	Letter from Petitioners to State Water Resources Control Board RE: Request for Additional Briefing and Evidence	SB-AR-583
3/10/2010	Letter from State Water Resources Control Board to Petitioners and Los Angeles Regional Water Quality Control Board RE: Request for Voluntary Remand and Abeyance	SB-AR-589
3/11/2010	Letter from Los Angeles Regional Water Quality Control Board to State Water Resources Control Board RE: Los Angeles Water Board Agreement to Voluntary Remand	SB-AR-593

3/17/2010	Letter from Petitioners to State Water Resources Control Board RE: Request for Voluntary Remand and Abeyance	SB-AR-595
3/17/2010	Letter from U.S. Environmental Protection Agency, Region IX, to State Water Resources Control Board and Los Angeles Regional Water Quality Control Board RE: support for permit and focus of July 8, 2010 hearing	SB-AR-598
3/18/2010	Letter from Petitioners to State Water Resources Control Board RE: Errata and Corrected Letter	SB-AR-600
3/18/2010	Letter from NRDC and Heal the Bay to State Water Resources Control Board RE: Request for Voluntary Remand and Abeyance in Petition of the Ventura County Municipal Stormwater Permit	SB-AR-604
3/30/2010	Letter from State Water Resources Control Board to Petitioners RE: Dismissal	SB-AR-609
4/20/2010	Letter from Petitioners to State Water Resources Control Board RE: Request to Vacate and Formally Remand Order No. R4-2009-0057	SB-AR-612
4/21/2010	Letter from State Water Resources Control Board to Petitioners RE: Response to April 20, 2010 Letter	SB-AR-616

Building Industry Legal Defense Foundation
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Attorney for Petitioners
BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.,

STATE WATER RESOURCES CONTROL BOARD

In the Matter of: California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Storm Water National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002	PETITION FOR REVIEW OF VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT REQUEST FOR IMMEDIATE STAY REQUEST FOR HEARING Cal. Water Code § 13320

Pursuant to California Water Code Section 13320 and Section 2050 et seq. of Title 23 of the California Code of Regulations, Building Industry Legal Defense Foundation ("BILD"), the Construction Industry Coalition on Water Quality ("CICWQ"), and Building Industry Association of Southern California, Inc. ("BIA/SC"), (collectively, "Petitioners") seek review of the final decision of the California Regional Water Quality Control Board, Los Angeles Region (the "Regional Board") to approve the Ventura County municipal separate storm sewer system permit as it relates to Petitioners and to the broader general public.

1. Name and Address of Petitioners:

Building Industry Legal Defense Foundation
1330 South Valley Vista Drive
Diamond Bar, California 91765
Attn: Andrew R. Henderson, Esq.

Construction Industry Coalition on Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, California 91791
Attn: Mr. Michael Lewis

Building Industry Association of Southern California, Inc.
1330 South Valley Vista Drive
Diamond Bar, California 91765
Attn: Andrew R. Henderson, Esq.

2. Action of the Regional Board Being Petitioned:

By this Petition, Petitioners challenge the Regional Board's approval Order No. R4-2009-0057, NPDES No. CAS004002, entitled "Waste Discharge Requirements for Storm Water Discharges from the Municipal Separate Storm Sewer System within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein" (the "Permit" or the "Ventura Permit").

3. Date of Regional Board Action:

The Ventura Permit was approved by the Regional Board on May 7, 2009, following a bewildering public hearing at which the Regional Board rejected entire sections of the tentative permit that was duly publicized for public comment, a replaced those sections with sweeping, new and different provisions that were untimely proposed prior to the hearing. The Regional Board's staff thereafter needed longer than three weeks to publicize the Ventura Permit in its final form –

on June 2, 2009 (less than one week before this Petition's filing deadline).

4. Statement of Reasons Why the Regional Board Action was Inappropriate or Improper:

The Regional Board's adoption of the Ventura Permit was contrary to law, an abuse of discretion, lacking in substantial evidence, and in violation of due process, for the following principal reasons:

- The Regional Board's adoption of the Permit was in violation of due process because the Board publicized (timely, more than 30 days prior to the May 7, 2009 date of adoption of the Permit) a tentative permit that was radically different from the Permit as it was ultimately approved. Specifically, the tentative permit that was publicized for public comment, taken as a whole, reflected no requirement that storm water must generally be captured and *retained on site* at any future development of redevelopment of land within Ventura County. Less than 30 days before the public hearing at which the Regional Board approved the Ventura Permit, however, certain non-governmental organizations joined forces with certain representatives of the permittees to reveal a secretly-negotiated side agreement, which recommended wholesale, substantive changes to the land use provisions and removal of the "municipal action level" provisions of the tentative permit that had been noticed for public review and comment. At the hearing, the Regional's Board's staff recommended to the Regional Board that it should reject the proffered changes on technical, scientific, evidentiary and policy grounds; but the Regional Board rejected its staff's recommendations, and instead adopted – wholesale – permit requirements that were dictated in a secretly-negotiated side agreement and dictated to the Regional Board (the "Side Agreement"). Thus, while Petitioners were focused on the tentative permit (which was the fourth in a series, and was timely publicized), the Regional Board chose instead to approve the Side Agreement at the May 7th hearing. For the reasons explained in this

Petition, the Side Agreement should have been rejected on substantive legal, policy, technical, scientific and evidentiary grounds. That notwithstanding, any consideration of the Side Agreement by the Regional Board would necessitate a recirculation of a new tentative permit for public comments. *See Natural Resources Defense Council v U.S. E.P.A.*, 279 F.3d 1180, 1188 (9th Cir. 2002) (requiring recirculation for public review and comment: "[T]here is no doubt that ***there was a fundamental policy shift, rather than natural drafting evolution, between the draft permit and the final permit.***") (emphasis added). Given the Petitioners' proper focus on the duly-publicized tentative permit, the Petitioners were able to assemble and present only limited arguments and evidence against the Side Agreement (having watched its tardy arrival from "left field") – merely in an unsuccessful attempt to obviate any need for yet another tentative permit recirculation involving the Side Agreement. Following the bewildering public hearing on May 7, 2009, Petitioners demanded that the Regional Board undertake such a recirculation of the provisions that it had adopted. The demand was, however, refused.

- The Ventura Permit unlawfully regulates matters that are not properly subject to the National Pollutant Discharge Elimination System ("NPDES") program, by requiring that all future development and redevelopment must retain on site diffuse surface water (the sheet flow of storm water) regardless of a nexus *vel non* to an MS4 system or jurisdictional waters, and regardless of the existence *vel non* of any waste in such diffuse surface water.
- In adopting the Ventura Permit, the Regional Board disregarded the authority and obligations of local government, instead ordering local governments to wield its land use authority and meet land use obligations as the Regional Board sees fit, in violation of the Clean Water Act and California law, which place authority and obligations in the hands of local elected officials. (Such provisions are unlawful notwithstanding that the Permittees were complicit in

such derogation of state law by negotiating the Secret Agreement.) For example, the Permit would allow development or redevelopment to proceed anywhere in Ventura County only if steps are taken to retain on site large proportions of storm water that normally falls on anthropogenic impervious surfaces. Although the requirements allow a limited infeasibility exception applicable to some development, even the mandate to retain storm water on site where feasible negates the legal feasibility of any and all environmentally preferable alternative project design features and mitigation measures. Specifically, environmentally preferable alternatives and mitigation measures that would otherwise be required pursuant to the California Environmental Quality Act ("CEQA") could not be pursued and required because of the arbitrary requirements set forth in the Ventura Permit.

- In numerous and profound ways, the Regional Board's adoption of the Ventura Permit is unsupported by substantial evidence; and the Regional Board failed to bridge the "analytical gaps" among (i) the evidence that was in the record, the (ii) findings that it approved at the May 7th hearing, the (iii) goals of the laws that it is charged with implementing, and (iv) its ultimate decision reflected in the Ventura Permit. Among other things: (1) the Regional Board was openly deferential to the Secret Agreement, going so far as to openly and expressly abdicate its ability to change any provision of the Secret Agreement when incorporating it *in toto* into the Ventura Permit; (2) the Ventura Permit includes requirements to permit development and redevelopment only if the resulting construct will capture and retain on site diffuse surface water – merely because storm water will fall on anthropogenic impervious surfaces – to the detriment of the ephemeral streams, wetlands, and neighing lands that would otherwise receive the natural flows of diffuse surface water; (3) the Ventura Permit includes random percentages concerning such requirements, all in disregard of any site-specific contextual considerations, and plainly at variance with the

numerous laws that aim to protect the natural environment (including the federal Clean Water Act itself).

- The Ventura Permit and the revised tentative version from which the Regional Board worked at the May 7th hearing pay lip-service to the Regional Board's statutory obligation to consider the factors set forth in Water Code Section 13241. The Regional Board suddenly embraced the Side Agreement at the May 7th hearing, however, and gutted and replaced the land use provisions of the Permit on the spot, without any reconsideration of the Section 13241 factors. Any fair consideration of the Section 13241 factors as applied to the storm water retention requirements in the Ventura Permit would preclude their adoption.

5. How Petitioners are Aggrieved:

Petitioners are aggrieved by the Regional Board action as follows:

Petitioners BILD and BIA/SC are California non-profit corporations dedicated to eliminating undue barriers to appropriate homebuilding and community development. Working together, they represent the interests of more than 1,600 member companies in the Southern California construction and building industry and related pursuits. BIA/SC members construct the majority of the homes that are built in Southern California, including Ventura County. BILD is a wholly controlled affiliate of BIA/SC which addresses legal issues related to unlawful and undue impediments to homebuilding and community development.

Petitioner Construction Industry Coalition on Water Quality (CICWQ) is an unincorporated association of more than 3,000 member companies, comprised of construction contractors, labor unions, land owners, developers, and homebuilders throughout the region and beyond, including the Association of General Contractors, BIA/SC, the Engineering Contractors Association, and the Southern California Contractors Association.

All segments of BIA/SC's and CICWQ's membership are impacted by the Ventura Permit, including the employees of the companies that rely upon the reasonable ability to build and redevelop communities and homes. BIA/SC and CICWQ members and BILD's constituents

reside in Ventura County and conduct community development and homebuilding in Ventura County. Their members, and hence these organizations, are therefore aggrieved because the members will be required to operate within the many terms of the Ventura Permit; and the Ventura Permit directly impacts them.

In addition, the Petitioners are aggrieved by being subject derivatively to the various waste discharge requirements that the Ventura Permit would impose on the permittees, to the extent that those requirements will mandate that the permittees must exercise their policy powers in ways that violate federal and state law and the rights of Petitioners' members. Lastly, Petitioners are aggrieved because the Ventura Permit would cause environment degradation throughout Ventura County by mandating interference with the natural flow of diffuse surface water, wherever on site retention is such water is uncritically required by the Ventura Permit and achieved pursuant thereto.

6. The Action Requested of the State Board:

Petitioners request the State Board to accept this Petition, suspend the Ventura Permit, declare that the Ventura Permit was issued in violation of due process, conduct a formal adjudication, declare the arbitrary retention policies presently in the Ventura Permit to be contrary to State and federal policy and law, and remand the Ventura Permit to the Regional Board for further proceedings consistent with the positions in this Petition and the law.

7. Statement of Points and Authorities:

See attached, Memorandum of Points and Authorities, attached hereto and incorporated into this Petition.

8. Statement Concerning Distribution of Copies of this Petition:

In accordance with the State Board's instructions, Petitioners have sent by electronic mail a copy of this Petition to the Regional Board and to the dischargers (i.e., the permittees), both directly and by and through the legal counsel to the Principal Permittee (the consortium of all Permittees). Specifically, a copy of this Petition and accompanying documents were sent to the following persons:

a) Ms. Tracy Egoscue, California Regional Water Quality Control Board, Los Angeles

Region, tegoscue@waterboards.ca.gov

b) Michael Levy, Esq., Senior Staff Counsel, Office of the Chief Counsel (State Board), mlevy@waterboards.ca.gov

c) Mr. Gerhardt Hubner, Ventura Countywide Stormwater Quality Management Program, Gerhardt.Hubner@ventura.org

d) Norma Camacho, Ventura County Watershed Protection District, Norma.Camacho@ventura.org

e) Tess Dunham, Special Counsel to Ventura Countywide Stormwater Quality Management Program, tdunham@somachlaw.com

f) Wally Bobkiewicz, City of Santa Paula, wbobkiewicz@ci.santa-paula.ca.us

g) Dave Norman, City of Port Hueneme, dnorman@ci.port-hueneme.ca.us

h) Edmund Sotelo, City of Oxnard, Edmund.Sotelo@ci.oxnard.ca.us

i) Jere Kersnar, City of Ojai, kersnar@ci.ojai.ca.us

j) Jerry Bankston, City of Camarillo, jbankston@ci.camarillo.ca.us

k) Mike Sedell, City of Simi Valley, msedell@simivalley.org

l) Rick Cole, City of Ventura, rcole@ci.ventura.ca.us

m) Scott Mitnick, City of Thousand Oaks, SMitnick@toaks.org

n) Steven Kueny, City of Moorpark, skueny@ci.moorpark.ca.us

o) Tom Ristau, City of Fillmore, tristau@ci.fillmore.ca.us

p) Marty Robinson, City of Ventura, Marty.Robinson@ventura.org

9. Statement Regarding the Issues in the Petition which were Raised to the Regional Board, and Explanation of Why the Petitioner Could Not Raise All Objections:

Because the Petitioners were naturally focused on the requirements reflected in the fourth tentative permit, taken as a whole (which was duly publicized for public review and comment), and not on the intruding Secret Agreement (which ultimately became the Ventura Permit's land use section), Petitioners had only limited ability and objectively perceived need to assemble evidence against and comment on the unprecedented land use aspects of the Ventura Permit. Many individuals at the adoption hearing (including the Regional Board's members themselves)

commented on the bizarre process undertaken thereat by the Regional Board, where it gutted the tentative permit and replaced the gutted portions with the Secret Agreement. Petitioners also made an effort to persuade the Regional Board to ignore much of the substantive thrust of the Secret Agreement, and proffered objections to basic aspects of the Secret Agreement (particularly the universal requirement to retain storm water on site uncritically, and the outright rejection of bio-filtration and similar "low impact development" methodologies).

Because, however, Petitioners objections and comments were appropriately aimed at both refining and qualifiedly supporting the tentative permit that was duly noticed for public comment and hearing, Petitioners were unable to assemble evidence that can be and is being assembled to demonstrate persuasively that the Ventura Permit is (i) contrary to sound scientific evidence and universally-appreciated policies, and (ii) should not be allowed to stand.

10. Request for Hearing:

Petitioners request that the State Board conduct a hearing in this matter so that evidence can be marshaled and presented (i) concerning the unprecedented and unreasonable mandates currently reflected in the Ventura Permit, and (ii) which could not have been presented below given that the Regional Board publicized a fourth tentative permit that was, taken as a whole, completely unlike the Secret Agreement.

11. Request for Stay:

Petitioners request that any application of the Ventura Permit be stayed pending resolution of this matter. Allowing the Ventura Permit to operate without a stay will substantially harm Petitioners and the public at large, because land use planners and property owners would need to radically amend their land use planning constructs to conform to the on site retention mandates reflected in the Ventura Permit. The State Board should not place Petitioners or the people of Ventura County in a position of pursuing harm to environmental and physical resources of Ventura County. No other party or interest would be substantially harmed as a result of a stay, in that the Regional Board's mandates, if pursued to implementation, would positively harm the environmental in comparison to the *status quo ante*. The Ventura Permit should not be enforced during the pendency of the stay, because substantial questions of law and fact remain.

12. Reservation of Rights to Amend this Petition and the Accompanying Points and Authorities, and to Supplement the Administrative Record:

Petitioners reserve their right to amend this Petition and the accompanying Points and Authorities. In addition, Petitioners reserve the right to supplement the administrative record below. These reservations of rights are appropriate and necessary in light of the above-stated information, and particularly in light of (i) the Regional Board's glaring due process violations, and (ii) that Petitioners could not obtain a copy of the Ventura Permit (corrected to reflect the terms of the Secret Agreement) until less than one week was remaining before the deadline for filing this Petition.

Dated: June 8, 2009

Respectfully submitted,

BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION

By _____
Andrew R. Henderson
Attorney for Petitioners
Building Industry Association
of Southern California, Inc.

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BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.,

STATE WATER RESOURCES CONTROL BOARD

In the Matter of: California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ISSUES SET FORTH IN PETITION FOR REVIEW OF VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT REQUEST FOR IMMEDIATE STAY REQUEST FOR HEARING Cal. Water Code § 13320

I.

INTRODUCTION

Petitioners worked for years to inform the Regional Board, its staff, and other stakeholders about the real-world and practical implications of the land use and "low impact development" ("LID") provisions that could be appropriately required in Ventura County. Notwithstanding all of that work, the Regional Board has now approved the Ventura Permit. It is the result of a last-moment, radical overhaul of the tentative permit that was publicized by the Regional Board for public comment.

Having put so much work into explaining and demonstrating how LID aims could be advanced through a progressive MS4 permit in Ventura County, Petitioners are shocked by the Regional Board's sudden adoption of the Ventura Permit without the necessary public input, analysis and findings. The Regional Board (i) capitulated to special interests, (ii) turned its back on months and years of hard work by its staff, (iii) gutted wholesale the land use provisions of the tentative permit, and (iv) substituted in their place requirements that were dictated *verbatim* to the Regional Board by non-governmental entities and uninformed representatives of the permittees.

For the reasons set forth below, Petitioners urge the State Board to stay the effect of and ultimately set aside the Ventura Permit.

II.

FACTUAL BACKGROUND

On February 24, 2009, the Regional Board publicized its tentative permit concerning the MS4 systems in Ventura County (the "February Tentative Permit"). Notably, the February Tentative Permit was the fourth such tentative draft in a series of tentative drafts publicized by the Regional Board over the course of several years, as the Regional Board's staff grappled with critical comments and strong objections by various stakeholders to the three earlier tentative permits raised by various stakeholders. Most importantly, except for one ambiguous and internally-inconsistent provision (the effect of which was expressly disavowed by the Regional Board's staff as unintended), ***the February Tentative Permit never suggested any prohibition***

against discharges of stormwater across property lines.

The February Tentative Permit contained certain provisions that would have imposed new and controversial "impervious surface" limitations on new development and redevelopment anywhere in Ventura County. Specifically, the February Tentative Permit would have limited "effective [anthropogenic] impervious area" ("EIA") to only 5% of any project site. Petitioners had long objected to the 5% EIA concept on many grounds, mainly on the grounds that it (i) was an arbitrary percentage to apply county-wide, (ii) was uncritically established for application at a small-scale (i.e., project) level, (iii) would be imposed uniformly throughout Ventura County without regard to the clear contextual differences within Ventura County, and (iv) would seriously interfere with growing policy imperatives to increase in-fill development and densification of housing, both of which are goals aimed at achieving more sustainable development.

Although Petitioner took issue with the 5% EIA requirement reflected in the February Tentative Permit, the 5% EIA requirement as therein proposed was perfectly acceptable compared to the requirements that the Regional Board ultimately approved in the Ventura Permit. Specifically, the 5% EIA requirement set forth in the February Tentative Permit expressly specified that anthropogenic impervious area on any parcel could be rendered "ineffective" (and therefore would not count toward the 5% EIA limitation) if the diffuse surface water (i.e., sheet flow of stormwater) from such anthropogenic areas were drained over or through an appropriate buffer or filtration medium before leaving the site. For example, anthropogenic impervious area could be rendered "ineffective" (and thus permissible and not counted toward the 5% EIA limitation) if stormwater emanating from the impervious area were to drain over a vegetated buffer before leaving the site.

Therefore, practices such as vegetative buffers and vegetative swales could be used to meet the disconnection requirements reflected in the February Tentative Permit. Accordingly, prospective development or redevelopment could proceed in ways that would **allow the land owners, developers and homebuilders to maintain – or approximate as much as possible – the pre-development hydrology of the site**. Specifically, by using vegetated surfaces, projects could be developed so that stormwater emanating from anthropogenic impervious surfaces could

nonetheless follow its natural course from the site (i.e., across property lines, etc.).

Most importantly, because of its overall terms and stated conditions, as confirmed by discussions with the Regional Board's staff, the 5% EIA limitation set forth in the February Tentative Permit did not require any steps to retain stormwater on site at any project, or otherwise prohibit the discharge of stormwater across property lines or toward an MS4 system. Rather, the February Tentative Permit's requirement to "disconnect" anthropogenic impervious surfaces from directly discharging across a property line plainly indicated that diffuse surface water could still flow from the property in question in accordance with the pre-development natural hydrology.

The Regional Board's publication of the February Tentative Permit called for all interested parties to provide written comments by April 10, 2009 – less than thirty days before the May 7th public hearing at which the Regional Board surprisingly approved the Ventura Permit. Therefore, Petitioners provided comments of both a technical and legal nature on April 10, 2009. In those comments, Petitioner BIA/SC pointed to the one internally-inconsistent aspect that seemingly hinted at a permanent stormwater retention requirement, noting that such a requirement would be contrary to the overwhelming bulk of the provisions, and would be contrary to millennia of civil law. At the same general time, Petitioners' representatives repeatedly confirmed with the Regional Board's staff that it was not the staff's intention to impose any waste discharge requirements that would prohibit the discharge of stormwater across property lines.

The same day, April 10, 2009, certain non-governmental organizations (*e.g.*, Heal the Bay, Inc. and Natural Resources Defense Council, Inc.) and some like-minded representatives of the Ventura County MS4 permittees joined together and submitted comments in which they proposed a new and radically different EIA concept that would effectively prohibit storm water discharges across property lines in many situations. Their April 10th comments proposed, for the first time, that substantially all stormwater that falls on an anthropogenic impervious surface (except in very large storms) **must be retained permanently on site** for infiltration into the ground, evapotranspiration, or reuse onsite (the "Permanent Retention Requirement"). Thus, rather than seeking to mimic, maintain or approximate the natural, pre-development hydrology when developing or redeveloping land, this group sought – through their proposed Permanent Retention

Requirement – to require land planners, developers and builders **to completely arrest – rather than maintain – the pre-development hydrological flows**. This would constitute a radical policy shift.

Notably, the Permanent Retention Requirement was developed by its proponents through secret discussions that excluded many stakeholders (e.g., the discussions excluded both the Regional Board's staff and Petitioners' representatives, who represent companies that actually build projects). Those within the secret discussions gave Petitioners a glimpse of their concept only days before April 10, 2009, while Petitioners were busily focusing on the duly-publicized February Tentative Permit and its provisions. Thus, Petitioners knew only days before April 10, 2009, about the radical nature and details of the Permanent Retention Requirement. Because Petitioner were appropriately focused, however, on the fast-approaching April 10th cut-off date for written public comments concerning the February Tentative Permit, Petitioner were neither able (on such scant insight) nor compelled (given the relatively sensible public notice from the Regional Board) to assemble technical and scientific evidence against proposed Permanent Retention Requirement.

As the Petitioners thereafter prepared for the May 7th public hearing concerning the February Tentative Permit, the Regional Board's staff publicized, on April 30, 2009, a revised tentative permit (the "April 30th Revision"). Included within the April 30th Revision were EIA provisions that, like the February Tentative Permit, would have allowed the use of bio-vegetation and vegetated swales and buffers to render impervious areas "ineffective" (and therefore permissible) and – most importantly – would have allowed projects to be built in ways that would mimic, or maintain, or approximate the pre-development hydrology. Thus, the Regional Board's staff's April 30th Revision, heading into the May 7th public hearing, impliedly rejected the proposed Permanent Retention Requirement outright.

The April 30th Revision also included a new finding that squarely addressed the proposed Permanent Retention Requirement. Specifically, within the April 30th Revision, there appears Finding No. 19, which reads:

> Staff finds there is a growing acceptance by stormwater professionals to

integrate LID principles into stormwater management programs and MS4 permits. However, there remains significant controversy regarding the appropriate requirements and metrics for LID. At the heart of this controversy is a dispute regarding the feasibility and effectiveness of requiring a fixed volume of stormwater to be captured and retained onsite for infiltration, reuse, and evapotranspiration, as opposed to permitting a portion of the stormwater to be released off site after it is treated, when it is infeasible to retain the required stormwater on site due to site specific conditions.

Staff has reviewed extensive technical literature regarding this issue (*e.g.*, R. Horner, *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County* (February 2007), E. Strecker, A. Poresky, D. Christsen, *Memorandum, Rainwater Harvesting and Reuse Scenarios and Cost Consideration*, (April, 2009). Staff finds that there is a consensus in the technical community that site conditions and the type of development can limit the feasibility of retaining, infiltrating and reusing stormwater at sites due to a variety of site specific conditions. Factors that affect the feasibility of a fixed volume capture include, but are not limited to: soils infiltration capacity, subsurface pollution, and locations of urban core centers.

Regarding the effects of capturing a fixed stormwater volume on site, Staff finds the fixed volume approach may be ignoring basic hydrology principles that relate to the feasible infiltration to the infiltration capacity of local soils. Requirements to capture a fixed volume on site could disturb the natural water balance and lead to unintended engineering and hydrologic consequences. For example, a typical hydrological condition in Ventura County is one of successive storms during the winter which may exceed the stormwater capacity that can

> **be retained on site. This may result in ponded water on site with attendant health risks, saturation of the near surface soils, and reduction of water resources in Regional waterbodies. <u>These effects could damage site structures, increase groundwater pollution by forcing enhanced pollution spreading, or destroy aquatic habitat. Staff finds these potential effects are not well evaluated scientifically</u>. Finally, staff cannot find that a fixed retention volume versus a standard that attempts to release surface flows at a predevelopment level would result in a greater reduction of stormwater pollution.**

April 30th Revision, pp. 6-7 (emphasis added).

When it approved the Ventura Permit on May 7, 2009, <u>the Regional Board voted to accept this Finding No. 19</u>. Specifically, the Regional Board worked hard to perform major surgery on the April 30th Revision in order to strip out the land use provisions therein and replace them with the terms of the Secret Agreement (which contained the Permanent Retention Requirement). When performing the surgery (cutting out whole pages of text from the April 30th Revision and pasting in the Secret Agreement), **the Regional Board neither deleted nor edited Finding No. 19** on page 6-7 of the April 30th Revision. *See* Transcript of the Regional Board's May 7th Hearing, pp. 351-59 (arduously specifying, page by page, the Regional Board's edits to the April 30th Revision).

Therefore, the finding set forth above is indeed still reflected in the Ventura Permit – having been approved by the Regional Board on a 5-1 vote. *See* Ventura Permit, pp. 8-9. It remains as a particularly damning statement about the Regional Board's precipitous action.

III.

PETITIONERS AND THE PUBLIC AT LARGE WERE DENIED DUE PROCESS AND A FAIR OPPORTUNITY TO COMMENT ON THE PERMANENT RETENTION REQUIREMENTS

Petitioners' counsel wrote to the Regional Board twice to request that the Regional Board undertake a recirculation of the Ventura Permit rather than finalize it without giving Petitioners and the general public an opportunity to comment on the permit requirements that resulted from

the Regional Board's gutting and filling on May 7, 2009. Petitioners' counsel first contacted counsel for the water boards assigned to the Regional Board within days after the hearing. Upon being rebuffed, Petitioners' counsel wrote formally to the Regional Board on May 20, 2009, demanding that the Regional Board re-publicize the Ventura Permit for public review and comment. In response to the letter, Petitioners' counsel eventually was told, "Staff is confident that the changes made to the MS4 permit at the hearing are indeed a logical outgrowth of the proceedings, and their inclusion did not unfairly prejudice any stakeholder." *See* Letter dated May 29, 2009, from Michael J. Levy, Esq., to Petitioners' Counsel, p. 2.[1]

Respectfully, the Regional Board cannot rely on the platitude that the Ventura Permit is a "logical outgrowth" of either the February Tentative Permit or the April 30th Revision. Although the "logical outgrowth" language is frequently invoked by the courts and agencies, close inspection of the relevant law indicates that a far more meaningful inquiry must be undertaken. Specifically, as was explained in *Small Refiner Lead Phase-Down Task Force v. U.S. E.P.A.*, 705 F.2d 506, 547-49 (D.C. Cir. 1983):

> [T]he test, imperfectly captured in the phrase 'logical outgrowth,' is whether the [plaintiff], *ex ante* [i.e., before the event], should have anticipated that such a requirement might be imposed. We think [here] not. The connection between [the agency's] request for comments and the [ultimately imposed] requirement is simply too tenuous."

See also American Water Works Ass'n v. E.P.A., 40 F.3d 1266, 1275 (D.C. Cir. 1994) ("Because we find that the interested parties could not reasonably have 'anticipated the final rulemaking from the draft ..., we conclude that the [agency] failed to provide adequate notice that it would adopt a novel definition .... Accordingly, we vacate the rule...."); *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 863 F.2d 1420, 1429 (9th Cir. 1988) ("If the final rule deviates too sharply from the proposal ..., affected parties will have been deprived of notice and an opportunity to respond

[1] The May 29th letter contains a number of factual representations that are incorrect or misleading The letter states that some of the Petitioners "were aware" that the secret discussions that led to the Secret Agreement "had been ongoing since at least as far back as December 2008." Although there were, for some time, vague reports of some secret discussions among certain stakeholders, Petitioners were purposely excluded from those discussions, and could only guess their actual contents.

to the rule. * * * *The essential inquiry focuses on whether interested parties reasonably could have anticipated the final rulemaking from the draft permit.*") (emphasis added).

Here, the February Tentative Permit (apart from one small internally-inconsistent facet, the potential effect of which was repeatedly disavowed by the Regional Board's staff as a unintended scrivener's error) provided no hint that the Regional Board would consider the Permanent Retention Requirement, which was first squarely introduced at the *close* of the time for written comments.

Again, the Permanent Retention Requirement radically shifts the goal of low impact development (LID) from **maintaining** the preconstruction natural hydrology to **arresting** the preconstruction natural hydrology. Had the February Tentative Permit squarely suggested any such possibility, Petitioners and – one may assume – many as-yet uninvolved stakeholders would have responded in great force.[2] *See Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 279 F.3d 1180, 1188 (9th Cir. 1992) ("[T[here is no doubt that ***there was a fundamental policy shift, rather than natural drafting evolution,*** between the draft permit and the final permit.") (emphasis added). Accordingly, no one can plausibly maintain that the Regional Board's wholesale rewriting of the Ventura Permit – especially given the circumstances surrounding the Secret Agreement – constitutes a natural drafting evolution.

IV.

THE VENTURA PERMIT UNLAWFULLY REGULATES MATTERS THAT ARE NOT PROPERLY SUBJECT TO THE NPDES PROGRAM

Importantly, the Ventura Permit is entitled, ""Waste Discharge Requirements for Stormwater Discharges ***from*** the Municipal Separate Storm Sewer System within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein." (Emphasis added.) If the Ventura Permit were aimed at regulating discharges from MS4 facilities

[2] For example, Petitioners' counsel contacted key local staff officials at two relevant agency's, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service, after April 10th (when the Secret Agreement was submitted to the Regional Board) to ask whether they were aware that the Regional Board might consider the Permanent Retention Requirement. These agencies reported that they were unaware of and would be troubled by any such possibility. As the Ventura Permit's Finding No. 19 (pp. 8-9) states, a stormwater Permanent Retention Requirement could "destroy aquatic habitat." Such destruction would, of course, naturally be of concern to these agencies.

in Ventura County, perhaps the title would be apt. The Ventura Permit regulates matters, however, that have nothing to do with either the waters of the United States or MS4 facilities within the County. Indeed, the Ventura Permit regulates many stormwater discharges that are neither *from* nor *into* the MS4 facilities in the County.

For example, the Permanent Retention Requirement that sprung from the Secret Agreement specifies that the Ventura County permittees must enact general ordinances to assure that no land development or redevelopment may occur anywhere in the County unless the development or redevelopment will result in the arrest and retention of stormwater at the project site. It does not matter that development or redevelopment may occur on properties in the County where the natural flow of stormwater would never flow into an MS4 facility. Some areas of the County indeed have no MS4 facilities, so that diffuse surface flows would flow directly into natural watercourses that lead ultimately to the ocean. Yet these properties are implicated by the Ventura Permit and its Permanent Retention Requirement.

Even more remarkably, the Permanent Retention Requirement would apply to properties from which diffuse stormwater would flow to *neither* MS4 facilities *nor* any discrete water courses or water bodies. For example, where a parcel is immediately uphill of a large working farm that is routinely tilled, diffuse surface water flowing from the uphill parcel (before and following its development) would flow down to the farm, where it would then be infiltrated into the farm's tilled soil. The Ventura Permit makes no allowance for such circumstances, however; any development of the uphill parcel would require compliance with the Permanent Retention Requirement, i.e., active steps to *arrest* the natural flow of diffuse surface water.

The same would be true of a parcel that naturally drains diffusely into an isolated wetland. The Permanent Retention Requirement would mandate the unnatural arrest of the natural surface water flow even though there would be no impact on any MS4 facilities, any discrete water course, or federal waters. Instead, the only impact would be a potential negative environmental impact on the wetlands and any biota that rely on the natural flow of diffuse surface water.

Given these facts, it is clear that the Regional Board has chosen to regulate <u>all</u> of Ventura County with a one-size-fits-all numerical mandate, merely because <u>some portions</u> of the County

drain into – and ultimately from – MS4 facilities. Accordingly, the Ventura Permit is obviously overbroad in its regulatory sweep as an instrument of the NPDES program. In particular, Section 402(p) of the federal Clean Water Act charges the Regional Board (as the U.S. E.P.A.'s authorized surrogate) to regulate the discharges of stormwater "***from***" MS4 facilities. 33 U.S.C. § 1342(p)(3)(B). The Ventura Permit regulates much more. Accordingly, the Regional Board must be acting under a misapprehension of its powers and duties under California law.

V.

THE VENTURA PERMIT CONFLICTS WITH CENTURIES OF LEGAL PRINCIPLE CONCERNING RESPECT FOR THE NATURAL FLOW OF DIFFUSE SURFACE WATER.

The Regional Board ultimately ruled out the use of vegetative buffers for the filtration and discharge across property lines of stormwater – and would require instead, as a general proposition, that no stormwater (except in the largest rains) can leave a developed or redeveloped parcel. This is a radical requirement that should not be allowed to stand. It would violate millennia of civil law concerning the unconstrained flow of diffuse surface water (stormwater flow prior to its collection in any discrete watercourse). Specifically, the law in California embraces what is called the "***natural flow doctrine***" (the origins of which date originally back to the Roman Empire), which states that diffuse surface flows should be permitted to flow to their natural water course. *See Gdowski v. Louie*, 84 Cal.App.4th 1395, 1402 (2000) ("California has always followed the civil law rule. That principle meant 'the owner of an upper … estate is entitled to discharge surface water from his land *as the water naturally flows*. As a corollary to this, the upper owner is liable for any damage he causes to adjacent property *in an unnatural manner*…. In essence each property owner's duty is to leave the natural flow of water undisturbed.'" – emphasis added by the court, *quoting Keys v. Romley*, 64 Cal.2d 396, 405-06 (1966)).[3]

[3] The "natural flow doctrine" has been altered only slightly by the California courts in modern times to facilitate reasonable land development. Slightly altering the doctrine is a ***modern reasonableness test.*** Property owners may alter the natural flow of diffuse and/or discrete surface water, but only if they are reasonable when doing so, and downstream owners can trump the reasonable efforts of the upstream owner if he or she also takes reasonable defensive steps. *See, e.g., Locklin v. City of Lafayette*, 7 Cal. 4th 327, 337 (1994). Nonetheless, the natural flow doctrine remains the basis of the modern reasonableness test.

Juxtaposed against both the natural flow doctrine and the modern reasonableness test variation

The venerable natural flow doctrine – which seeks to maintain, rather than arrest, the natural flows of diffuse and discrete surface water – is the doctrine that conforms best to the federal Clean Water Act's overarching objective to "restore and *maintain*" the natural integrity of waters.[4] Accordingly, one would naturally expect the Regional Board, the State Board, and the non-governmental organizations that purport to defend natural resources to favor the *natural flow doctrine*, and deviate from it only if necessary to accommodate other extremely compelling societal goals. Instead, the Regional Board here, spurred on by non-governmental interests, imposed the Permanent Retention Requirement, with its prohibition against any natural *filtration* of diffuse surface water and its discharge across property lines. Such a Permanent Retention Requirement is a radical step – one that should not be taken without (i) direct and full notice, and (ii) much more discussion and study to take into account the myriad exceptions that such a policy would need.

VI.

THE VENTURA PERMIT CONFLICTS WITH STATE AND FEDERAL POLICIES THAT SUPPORT AND ENCOURAGE LOW IMPACT DEVELOPMENT.

The Ventura Permit's Permanent Retention Requirement flies in the face of recognized low impact development (LID) strategies, which generally aim to have LID undertaken so that the pre-construction flows of stormwaters are maintained, matched, or reasonably approximated – rather than arrested. For example, the U.S. E.P.A. in March 2009 issued its new definition of LID,

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thereof is a third doctrine, called the "***common enemy doctrine***." The common enemy doctrine stands for the propositions that (i) individual property rights are paramount, (ii) in developed and developing areas, diffuse and discrete surface water is a scourge, and (iii) essentially "every property owner is for herself or himself" and may take steps to alter the natural or unnatural flow of such waters for the protection of his or her property, without regard for the effect on neighbors. *Skoumbas v. City of Orinda*, 165 Cal.App.4 783, 792 (2008). Although the common enemy doctrine is sometimes still applied in a few other states, the common enemy doctrine has been largely discredited and criticized by progressive courts, environmentalists, academics, and concerned policy makers because of the obvious and very negative implications for the broader community and for the preservation and restoration of natural flows. *See Keys v. Romley*, 64 Cal.2d 396, 400-03 (1966) (Mosk, J., concurring).

[4] *See* S. Rep. No. 92-414, 92 Cong. 2d Sess., 2 U.S. Code Cong. & Adm. News '72 3668, 3674 ("The Committee believes the restoration of the natural chemical, physical, and biological integrity of the Nation's waters is essential."); H.R.Rep. No. 92-911, p. 76 (1972) (""the word 'integrity' ... refers to a condition in which the natural structure and function of ecosystems is [are] maintained.".

which states clearly that the use of LID best management practices (BMPs) for filtration (not just infiltration, evapotranspiration or reuse) is appropriate – and emphasizes the basic goal of trying to maintain pre-construction hydrology.

Specifically, the US EPA defines LID as follows:

> *A comprehensive stormwater management and site-design technique. Within the LID framework,* ***the goal of any construction project is to design a hydrologically functional site that mimics predevelopment conditions****. This is achieved by using design techniques that infiltrate,* ***filter****, evaporate, and store runoff close to its source.* (Emphasis added)
>
> http://cfpub1.epa.gov/npdes/greeninfrastructure/information.cfm#glossary

The Permanent Retention Requirement squarely conflicts with the fundamental policy goal of trying to mimic pre-development conditions. The requirement therefore also conflicts with State LID policies as well. Specifically, the State policy states:

> On January 20, 2005, the State Water Resources Control Board adopted sustainability as a core value for all California Water Boards' activities and programs, and directed California Water Boards' staff to consider sustainability in all future policies, guidelines, and regulatory actions.
>
> Low Impact Development (LID) is a sustainable practice that benefits water supply and contributes to water quality protection. Unlike traditional storm water management, which collects and conveys storm water runoff through storm drains, pipes, or other conveyances to a centralized storm water facility, LID takes a different approach by ***using site design and storm water management to maintain the site's pre-development runoff rates and volumes. The goal of LID is to mimic a site's predevelopment hydrology*** by using design techniques that infiltrate, ***filter***, store, evaporate, and detain runoff close to the source of rainfall. LID has been a proven approach in other parts of the country and is seen in California as an alternative to conventional storm water management. The Water Boards are advancing LID in California in various ways.
>
> LID provides economical as well as environmental benefits. LID practices result in less disturbance of the development area, conservation of natural features, and less expensive than traditional storm water controls. The cost savings applies not only to construction costs, but also to long-term maintenance and life cycle cost. LID provides multiple opportunities to retrofit existing highly urbanized areas and can be applied to a range of lot sizes.
>
> LID includes specific techniques, tools, and materials to control the amount of impervious surface, increase infiltration, improve water quality by reducing runoff from developed sites, and reduce costly infrastructure. ***LID practices include; bioretention facilities or rain gardens, grass swales and***

> ***channels***, vegetated rooftops, rain barrels, cisterns, ***vegetated filter strips***, and permeable pavements.
>
> http://www.swrcb.ca.gov/water_issues/programs/low_impact_development/index.shtml

Given the State Board's plainly-stated policy, the State Board should immediately see that the Regional Board's embrace of the Permanent Retention Requirement squarely conflicts.

VII.

THE VENTURA PERMIT UNLAWFULLY INFRINGES ON LOCAL GOVERNMENTAL AUTHORITY AND RESPONSIBILITIES TO REGULATE LAND USE PURSUANT TO CEQA

The initial section of the federal Clean Water Act expressly states that Clean Water Act programs, including the NPDES program, are not meant to infringe upon state and local land use authority:

> It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of the States … to plan the development and use (including restoration preservation, and enhancement) of land and water resources …

33 U.S.C. § 1251(b).[5]

Moreover, it has long been recognized in California that "the front line role in land use planning and zoning is in the hands of the ***local government***," as opposed to the state government or the executive agencies thereof. *Building Industry Ass'n of San Diego v. Superior Ct. of San Diego County*, 211 Cal.App.3d 277, 291 (1989) (finding that State land use planning and zoning law did not invalidate municipal ordinance relating to growth control) (emphasis added). The State's land use planning, zoning, environmental review and similar laws all leave "wide discretion to a local government not only to determine the contents of its land use plans, but to choose how to implement these plans." *Yost v. Thomas*, 36 Cal.3d 561, 573 (1984).

By requiring the permittees to enact general ordinances that would affect every parcel of land in Ventura County, regardless of any nexus to receiving waters within the Regional Board's purview, the Regional Board has crossed the line from a legitimate regulator of water quality to an

[5] The Supreme Court of the United States reaffirmed the primacy of the individual states in the areas of land development and land use, in full light of the Clean Water Act, in *Solid Water Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159, 174 (2001).

uninformed meddler concerning land use. The Regional Board has neither the jurisdiction, nor the policy expertise, nor the requisite local knowledge to intrude itself so completely into the land use regime. Given that the Regional Board must be acting pursuant to State authority (if any) when regulating land use so broadly, great care should be taken to assure that the requirements put forth by the Regional Board do not conflict with the mandates of other State laws concerning land use. Unfortunately, the Regional Board took no such care.

In particular, the Regional Board was repeatedly urged to seek ways to harmonize its waste discharge requirements with the California Environmental Quality Act ("CEQA"). Public Resources Code sections 21000 reflects the State Legislature's intent that CEQA should operate "to control environmental pollution" "so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian."

CEQA has a great advantage over the kind of "one-size-fits-all" numerical prescriptions like the 5% EIA mandate set forth in the Ventura Permit, because ***CEQA is contextual*** – it requires the analysis of projects in their respective actual contexts. Therefore, under CEQA, no one would impose an arbitrary Permanent Retention Requirement (such as that now mandated in the Ventura Permit) on a development project if maintaining the natural flow of diffuse surface water from the project site was an environmentally preferred alternative (*e.g.*, to feed an ephemeral stream or wetland, or where a sub-regional solution is environmentally preferable).

As Petitioners have long urged, the Regional Board could have recommended presumptive threshold of environmental significance concerning anthropogenic impervious surfaces, which could then be applied within the operation of CEQA to spur appropriate project design features and proper mitigation steps. Instead, the Regional Board has arbitrarily established the Permanent Retention Requirement, thereby imposing the *legal infeasibility* of seeking the optimal uses of land and environmental solutions pursuant to CEQA. *See City of Marina v. Board of Trustees of the California State Univ.*, 39 Cal.4th 341, 356 (2006) (discussing CEQA and the potential legal infeasibility of otherwise available mitigation measures).[6]

[6] The Ventura Permit is particularly troubling as it relates to so-called "in-fill" and urban

The Regional Board should be obliged to wield its delegated State authority consistent with State law. To the extent reasonable and appropriate, its delegated State authority should be construed as harmonious with the powers and obligations of local governments pursuant to CEQA. For this reason as well, the State Board should reject the Permanent Retention Requirement reflected in the Ventura Permit.

VIII.

THE VENTURA PERMIT IS UNSUPPORTED BY SUBSTANTIAL EVIDENCE AND FAILS TO PROVIDE AN ANALYTICAL ROADMAP SUFFICIENT TO SUPPORT THE PERMANENT RETENTION REQUIREMENT.

The Regional Board's adoption of the Ventura Permit is unsupported by substantial evidence. For proof, one need look no further than Finding No. 19, found on pp. 8-9 of the Ventura Permit. That finding is a full-throated confession that the Regional Board lacked any substantial evidence to support its embrace of the Permanent Retention Requirement. Similarly, there is no evidence anywhere in the record that would support the 30% EIA limitation that the Ventura Permit prescribes for development and redevelopment in urbanized areas of Ventura County. The only support in the record for the establishment of that percentage is the discussion at the May 7th public hearing – all to the effect that the Regional Board was compelled to accept the Secret Agreement *without any change*. *See* Transcript of Hearing, May 7, 2009, p. 362 (Board member Glickfeld: "Do I ever want to have a group – two stakeholders come to us [at a hearing] ***where there's not a word that can be changed*** and we sort of have to find out what that means? I don't think so. I don't think – this is a very extraordinary situation.") (emphasis added). There is no substantial record evidence to support the imposition of the 30% EIA limitation.

The California Supreme Court recently discussed the obligation of an agency to support its action *Environmental Protection & Information Center v. California Dept. of Forestry & Fire Protection,* 44 Cal.4th 459 (2008). There, the Supreme Court observed that an agency's findings,

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redevelopment. For development or redevelopment in relatively urban areas of the county, storm water could flow offsite from anthropogenic impervious areas totaling no more than 30% of the project site. There is no exception for infeasibility of the type that CEQA permits. Therefore, the Permanent Retention Requirement will likely thwart countless possibilities for high-density urban in-fill and redevelopment, even though such development is crucial to long-term sustainability.

when they are reviewed under the judicial standards set forth in California Code of Civil Procedure section 1094.5:

> do not need to be extensive or detailed. "[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision[,] it has long been recognized that the decision should be upheld if the agency 'in truth found those facts which as a matter of law are essential to sustain its ... [decision].' " [Citation.] On the other hand, mere conclusory findings without reference to the record are inadequate.

Id. at pp. 516-517. However, the court upheld the agency action in *Environmental Protection* only because it had "no trouble under the circumstances discerning 'the analytic route the administrative agency traveled from evidence to action." *Id.* at p. 517. Given that the Regional Board – acting in complete circus-like fashion during the adoption hearing – rejected all of the hard work performed by its staff, and instead embraced and exalted the Side Agreement, the Regional Board's actions cannot possibly pass muster under the tests set forth in the progeny of *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974).

IX.

THE REGIONAL BOARD'S LAST-MINUTE EMBRACE OF THE PERMENENT RETENTION REQUIREMENT BETRAY'S THE REGIONAL BOARD'S OBVIOUS REFUSAL TO COMPLY WITH WATER CODE SECTION 13241.

Lastly, when enacting water quality requirements, the Board is obligated to consider the specific factors set forth in Water Code section 13241. These are made applicable to permit requirements by Water Code section 13263, in accordance with *City of Burbank v. State Water Resources Control Bd.*, 35 Cal.4th 613 (2005). Adherence to this requirement is all the more imperative in the instant situation, because there is now – as a consequence of recent litigation – a Superior Court judgment against the Regional Board (currently stayed pending appeal) for the Regional Board's failure to ever properly consider the Section 13241 factors as they relate to stormwater.

Notably, the February Tentative Permit expressly stated that the Regional Board did not need to consider the factors set forth under Water Code section 13241, instead indicating that the federal standard for MS4 permitting set forth in 33 U.S.C. section 1324(p)(3)(B)(iii) preempts the need

or ability to consider the section 13241 factors. *See* February Tentative Permit, Findings E.25 at p. 21. The Ventura Permit (as approved) reflects the Regional Board's continued refusal to consider the Section 13241 factors. *See* Ventura Permit, Findings Nos. 24-28, pp. 26-27. Notably, however, the Ventura Permit relies on a certain study entitled "Economic Considerations of the Proposed Storm (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from the [MS4s] within … Ventura County ..., June 2, 2008," which is noted as contained in the administrative record for the Ventura Permit. *See* Ventura Permit, Finding No 28, p. 27. Specifically, Finding No. 28 argues that the Regional Board's consideration of the economic study *from June 2008* satisfied any obligation that it has under Section 13241. *See id.*

The transparent falsity of this Finding should be obvious because the substantive provisions of the permit changed radically ***on the day of its hearing***, yet there was never undertaken any new consideration of the Section 13241 factors vis-à-vis the last-minute substitution of the Secret Agreement. Plainly, the economic ramifications of arresting the natural flow of storm water – rather than maintaining it – are tremendous. Yet the Regional Board reconsidered nothing pursuant to Section 13241 when it gutted the April 30th Revision and filled it with the Secret Agreement.

The Regional Water Board repeatedly hides behind federal law when it wants to avoid altogether its Section 13241 obligations (*see* Ventura Permit, Finding No. 23, at p. 25), and merely pretends to consider the Section 13241 when it purports to consider them (*see* Finding No. 28, at p. 27). As Petitioners explained to the Regional Board, its obligation to consider Section 13241 factors is real notwithstanding the relevant federal law, for the following reasons:

It is true that the relevant federal statute law – 33 U.S.C. section 1324(p)(3)(B)(iii) – directs the Regional Board (here, as the U.S. E.P.A. Administrator's surrogate) to "require controls to reduce the discharge of pollutants to the maximum extent practicable[.]" However, this introductory "maximum extent practicable" directive is what is called "hortatory" (meaning it merely encourages or exhorts action) rather than mandatory (indicating any legally enforceable mandate). See Rodriguez v. West, 189 F.3d 1351, 1355 (Fed. Cir. 1999) (holding that the express "maximum extent possible" directive of former 38 U.S.C. section 7722(d) was "hortatory rather than to impose enforceable legal obligations"). Because the language is introductory and hortatory,

it does not require the Board to impose any and all possible requirements. Instead, the directive is merely a charge to go forth, balance interests, and require some reasonable controls.[7] Certainly, the federal directive is not a Congressional mandate to be immoderate.

Petitioners' reading of the relevant federal statute is bolstered by the remainder of 33 U.S.C. section 1324(p)(3)(B)(iii). Immediately following the introductory "maximum extent practicable" language is this: "including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (Emphasis added.) Thus, the federal statute merely instructs the Regional Board (as the E.P.A. Administrator's surrogate here) to exercise its broad discretion.

The federal courts have consistently ruled that the section 1324(p)(3)(B)(iii) federal directive is one mandating only the reasonable exercise of broad discretion – nothing more. *See Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992) ("Congress has vested in the [EPA or a surrogate state] broad discretion to establish conditions for NPDES permits."); *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 966 F.2d 1292, 1308 (9th Cir. 1992) ("NRDC contends that EPA has failed to establish substantive controls for municipal storm water discharges as required by the 1987 amendments. Because Congress gave the administrator discretion to determine what controls are necessary, NRDC's argument fails. * * * ***Congress did not mandate a minimum standards approach or specify … minimal performance requirements***." (emphasis added)); *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999) ("Under [the MEP standard set forth in Clear Water Act section 402(p)(3)(B)(iii)], the EPA's choice to include [or exclude] … limitations in [NPDES] permits [for MS4s] was within its discretion."); *City of Abilene v. U.S.*

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[7] *See Conservation Law Foundation v. Evans*, 360 F.3d 21, 28 (1st Cir. 2004):
[The environmentalist plaintiffs] essentially call for an interpretation of the statute that equates "practicability" with "possibility," requiring [the agency] to implement virtually any measure … so long as it is feasible. Although the distinction between the two may sometimes be fine, there is indeed a distinction. *The closer one gets to the [environmentalists'] interpretation, the less weighing and balancing is permitted.* We think by using the term "practicable" Congress intended rather to allow for the application of agency expertise and discretion in determining how best to manage … resources. (Emphasis added.)

E.P.A, 325 F.3d 657, (5th Cir. 2003) ("The plain language of [CWA section 402(p)] clearly confers broad discretion on the EPA [or a surrogate state agency] to impose pollution control requirements when issuing NPDES permits").

Given that the federal directive set forth in section 1324(p)(3)(B)(iii) merely mandates that the Regional Board must take evidence and exercise its broad discretion concerning permit conditions, there is no conflict – of the type giving rise to federal preemption concerns – between 33 U.S.C. section 1324(p)(3)(B)(iii), on the one hand, and Calif. Water Code section 13241, on the other hand. The latter (Water Code section 13241) requires the Regional Board to consider, when exercising its discretion, a certain list of non-exclusive factors (beneficial uses, environmental characteristics, realistic outcomes, economics, the need for housing, and the need to recycle water). California law further requires the Regional Board to provide a record of the required analysis which is sufficient to demonstrate that it has meaningfully weighed and considered each of the prescribed non-exclusive factors. *See Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515: "[T]he agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.... [The agency must reveal] the relationships between evidence and findings and between findings and ultimate action...."

In short, there is nothing about exercising discretion in compliance with Calif. Water Code sections 13241 and 13263 which conflicts with the federal mandate to go forth and exercise broad discretion when regulating MS4 permittees. The Supreme Court of the United States has stated that courts should always attempt to reconcile laws to avoid finding federal preemption. *See Merrill Lynch, Pierce, Fenner & Smith v. Ware*, 414 U.S. 117, 127 (1973); *see also Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982) ("[T]he inquiry is whether there exists an irreconcilable conflict between the federal and state regulatory schemes."). Both state and federal courts generally recognize a presumption against finding federal preemption, even when there is express preemptive language. *See, e.g., Washington Mutual Bank, FA v. Superior Court*, 75 Cal.App.4th 773 (1999):

In interpreting the extent of the express [federal] preemption, courts must be mindful that

there is a strong presumption against preemption or displacement of state laws. Moreover, this presumption against preemption applies not only to state substantive requirements, but also to state causes of action. *Id.* at 782, citing *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 523 (1992) and *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). In the absence of express federal preemptive language, the presumption against finding federal preemption is even stronger: "In the absence of express pre-emptive language, Congress' intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation. *Hillsborough County v. Automated Medical Labs*, 471 U.S. 707, 713 (1985).

In addition, the question of whether federal preemption exists is purely a question of law. *See, e.g., Industrial Trucking Association v. Henry*, 125 F.3d 1305, 1309 (9th Cir. 1997), citing *Inland Empire Chapter of Associated Gen. Contractors v. Dear*, 77 F.3d 296, 299 (9th Cir.1996) and *Aloha Airlines, Inc. v. Ahue*, 12 F.3d 1498, 1500 (9th Cir.1993) ("The construction of a statute is a question of law that we review de novo.... Preemption is also a matter of law subject to de novo review."). It does not matter that federal preemption springs from express statutory language or from federal regulations promulgated under a statute. In either event, federal preemption is a question of law. *See Bammerlin v. Navistar International Transportation Corp.*, 30 F.3d 898, 901 (7th Cir. 1994) (meanings of federal regulations are questions of law to be resolved by the court). Given that the existence and extent of federal preemption is properly as a question of law, the burden of demonstrating to a court that preemption exists rests with the party asserting the preemption (here, the Board) – because federal preemption is an affirmative defense. *See Bronco Wine Co. v. Jolly*, 33 Cal.4th 943, 956-57 (2004) ("The party who claims that a state statute is preempted by federal law bears the burden of demonstrating preemption.*"); see also United States v. Skinna*, 931 F.2d 530, 533 (9th Cir.1990) (stating that the burden is on the party asserting a federal preemption defense). Therefore, whenever the Regional Board asserts that federal law preempts the consideration and application of the Section Porter-Cologne Act's factors, the Board bears the burden of demonstrating, as a matter of law, that actions required of it under its enabling state law are preempted.

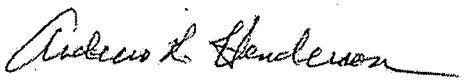
Armed with this understanding of the law, neither the Regional Board nor the State Board can reasonably maintain that the federal law precludes application of the California Water Code § 13241 balancing factors to the policy choices before it. Given the circus-like nature of the May 7th public hearing, the water boards cannot reasonably pretend that the Regional Board meaningfully consider the Section 13241 factors when it rejected its staff's recommendations and adopted the Secret Agreement.

For the reasons set forth above, and subject to Petitioners' reservation of rights to supplement the same, Petitioners respectfully seek the relief set forth in the Petition.

Dated: June 8, 2009

Respectfully submitted,

BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION



By _____
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SB_ARR033

California Regional Water Quality Control Board

Los Angeles Region

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Linda S. Adams
Cal/EPA Secretary

Arnold Schwarzenegge
Governor

June 2, 2009

Mr. Jeff Pratt, Director
Ventura Countywide Stormwater Quality Management Program
Ventura Watershed Protection District
800 South Victoria Avenue, L#1600
Ventura, CA 93009

Ventura County Municipal Stormwater Permittees

RETRANSMITTAL OF THE VENTURA COUNTY MUNICIPAL STORM WATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT (BOARD ORDER No. R4-2009-0057; NPDES PERMIT No. CAS004002)

Dear Mr. Pratt, et al:

Please find enclosed a retransmittal of the final National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Order (attached), which was adopted by the Regional Board at its meeting on May 7, 2009, pursuant to Division 7 of the California Water Code. This Permit replaces the version containing typographical errors which was mailed to you on May 29, 2009. Board Order R4-2009-0057, becomes effective 30 days after May 7, 2009 and serves as your NPDES permit, waste discharge requirements for stormwater (wet weather) and non-stormwater (dry weather) discharges from the MS4 within the Ventura County Watershed Protection District, County of Ventura, and the incorporated cities therein, and will expire on May 7, 2014.

The Ventura County MS4 Order No. R4-2009-0057 requires the Ventura County Watershed Protection District, herein referred to as the Principal Permittee, and other Co-Permittees to implement the NPDES Permit No. CAS004002, including the Reporting Program (Monitoring Report and Program Report). The Principal Permittee shall submit the first Annual Storm Water Report and Assessment under this Order for the period October 1, 2009 through September 30, 2010, by December 15, 2010.

June 2, 2009

We thank you, your staff, and the other Co-Permittees for their participation and assistance during the development and adoption of the MS4 permit for Ventura County. Should you have any comments or questions, please do not hesitate to call me at (213) 576-6605, or Samuel Unger at (213) 576-6622.

Sincerely,

Chief Deputy E.O. for

Tracy J. Egoscue
Executive Officer

Enclosure

cc: (sent via email)
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Thomas P. Glancy, City of Thousand Oaks, Co-Permittee
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NOAA, National Marine Fisheries Service
Department of Interior, U.S. Fish and Wildlife Service
California Coastal Commission, South Coast District
Department of health Services, Public Water Supply Branch
Water Replenishment District of Southern California
Ventura County Air Pollution Control District

Ventura County Public Works

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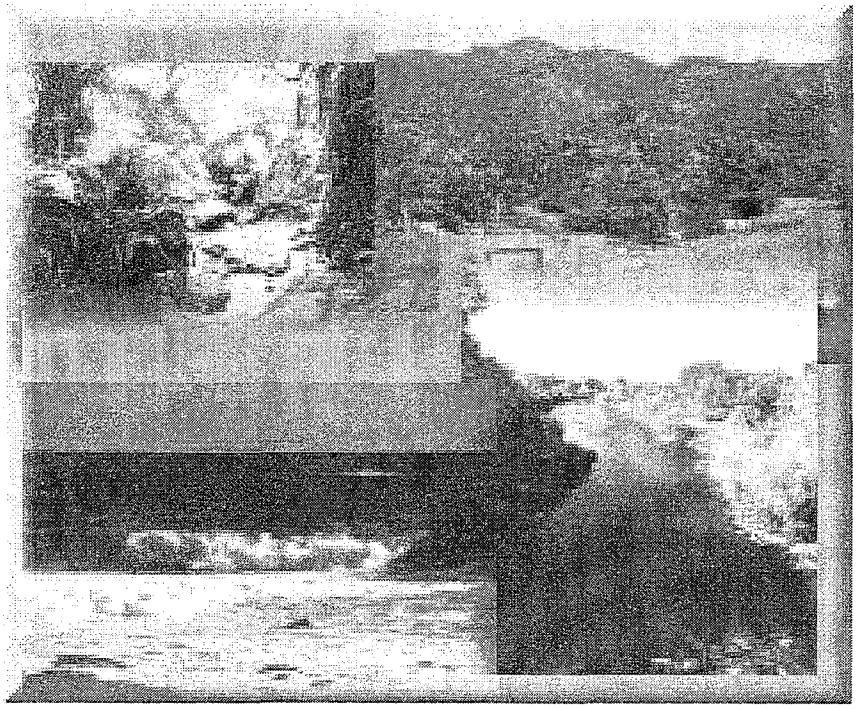
STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER 09-0057
NPDES PERMIT NO. CAS004002
WASTE DISCHARGE REQUIREMENTS
FOR
STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN.

May 7, 2009



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STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

ORDER 09-0057
NPDES PERMIT NO. CAS004002
WASTE DISCHARGE REQUIREMENTS
FOR
STORM WATER DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEM WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN

FINDINGS

The California Regional Water Quality Control Board, Los Angeles Region (hereinafter called Regional Water Board), finds that:

A. Permit Parties and History

1. Ventura County Watershed Protection District (Principal Permittee and Copermittee), County of Ventura, cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura (Ventura), Santa Paula, Simi Valley and Thousand Oaks (hereinafter referred to separately as Permittees) have joined together to form the Ventura Countywide Storm Water Quality Management Program to discharge wastes. The Permittees discharge or contribute to discharges of storm water and non-storm water from municipal separate storm sewer systems (MS4s), also called storm drain systems, into the Watershed Management Areas of Ventura River, Santa Clara River, Calleguas Creek, Malibu Creek and Miscellaneous Ventura Coastal all within Ventura County and Los Angeles County (see Attachment "A").

2. Prior to the issuance of this permit, storm water discharges from the Ventura County MS4 were covered under the countywide waste discharge requirements contained in Order No. 00-108, adopted by the Regional Water Board on July 27, 2000, which replaced Order No. 94-082, adopted by the Regional Water Board on August 22, 1994. Order No. 00-108 also served as a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of municipal storm water.

3. The Ventura County Board of Supervisors approved the concept of a countywide NPDES permit program and the use of the Flood Management District (presently the Watershed Protection District) benefit assessment authority to finance it on April 14, 1992. On June 30, 1992, the Ventura County Board of Supervisors adopted a benefit assessment levy for storm water and flood management in the unincorporated areas of Ventura County and the cities within the County, to be used in part to finance the implementation of a countywide NPDES municipal storm water permit program. The Ventura County MS4 Permittees have entered into an agreement with the Watershed Protection District to finance the activities related to the Ventura County MS4 Permit for shared and district wide expenses. The Permittees are also given the option to use the Benefit Assessment Program to finance their respective activities related to reducing the discharge of storm water pollutants under the MS4 Permit.

4. The Regional Water Board may require a separate NPDES permit for any entity that discharges storm water into the watersheds of Ventura County. Such an entity can be any State or Federal facility, special district or other public or private party.

B. Nature of Discharge

1. Storm water discharges consist of surface water runoff generated from various land uses in all the hydrologic drainage basins, which discharge into Waters of the State. The quality of these discharges varies and is affected by geology, land use, season, hydrology, and sequence and duration of hydrologic events. Based on the Ventura Countywide Storm Water Monitoring Program's Water Quality Monitoring Reports which were required under Order No. 00-108, the dry weather and wet weather Pollutants of Concern (POC) in urban stormwater include an anion, bacteria, conventional pollutants, metals, a nutrient, organic compounds, and pesticides. The POC are identified in Attachment "B" of this Order. Many of the POC listed are causing impairments identified on the federal Clean Water Act (CWA) § 303(d) list of impaired waterbodies.

   The State Water Board submits a report (a list of water quality limited segments (§ 303[d] list)) on the State's water quality to the U.S. EPA pursuant to § 305(b) of the 1972 CWA, and Title 40, CFR 130.7, every 2 years. The Report provides water

quality information to the general public and serves as the basis for the U.S. EPA's National Water Quality Inventory Report to Congress. Section 303(d) requires that all waters that are not attaining standards after the implementation of those controls required by 1977, shall be included on the list. Title 40 CFR 130.7(b)(3) defines "water quality standard applicable to such waters" as "those water quality standards established under § 303 of the Clean Water Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements."

2. Common pollutants in urban storm water and their respective sources are: bacteria from animal droppings and illegal discharges; Polycyclic Aromatic Hydrocarbons (PAHs) from the products of internal combustion engine operation and parking lot sealants wash off; nitrates from fertilizer application; pesticides from pest mitigating applications and from plant mitigating applications; bis (2-ethylhexyl) phthalate from the break down of plastic products; mercury from atmospheric fallout and improper disposal of mercury switches; lead from fuels, paints and automotive parts; copper from brake pad wear and roofing materials, zinc from tire wear and galvanized sheeting and fencing; sediment from land disturbance and erosion; trash and dioxins as products of combustion.

3. In general, the pollutants that are found in municipal storm water runoff can harm human health and aquatic ecosystems. In addition, the high volumes and high velocities of storm water discharged from MS4s into receiving waters can adversely impact aquatic ecosystems and stream habitat and cause stream bank erosion and physical modifications. These changes are collectively termed hydromodification. Municipal point source discharges of runoff from urbanized areas remain a leading cause of impairment of surface waters in California.

4. Ammonia as Nitrogen, and Nitrate plus Nitrite as Nitrogen are biostimulatory substances that can cause or contribute to eutrophic effects such as low dissolved oxygen and algae growth impairing warm freshwater and wildlife habitats. Ammonia is highly toxic to fish and other aquatic life. Excessive ammonia can cause aquatic life toxicity.

5. Elevated bacterial indicator densities impair the water contact recreation (REC-1) beneficial use at beaches, creeks, estuaries, lagoons, and marinas. Swimming in waters with

elevated bacterial indicator densities has been associated with adverse health effects. Specifically, local and national epidemiological studies indicate that there is a causal relationship between adverse health effects and recreational water quality, as measured by bacterial indicator densities (Pruss, 1998, Review of epidemiological studies on health effects from exposure to recreational waters, International Journal of Epidemiology; Haile et al., 1996, An epidemiological study of possible adverse health effects of swimming in Santa Monica Bay, Santa Monica Bay Restoration Project; and Haile et al., 1999, The health effects of swimming in ocean water contaminated by storm drain runoff, Epidemiology)"). Sources of elevated bacteria to marine and fresh waters may also include illegal discharges from improperly maintained standard septic systems, onsite wastewater treatment systems (OWTS) and illicit discharges from private drains.

6. Pesticides are substances used to prevent, destroy, repel or mitigate pests such as insects, weeds, and microorganisms. Their effects can be direct (e.g. fish die from exposure to a pesticide entering waterways, or birds do not reproduce after ingesting contaminated fish), or indirect (a hawk becomes sick from eating a mouse dying from pesticide poisoning). Pesticide categories include: Organochlorine, Organophosphorus, Organophosphate, and Pyrethroid.

7. Polychlorinated Biphenyls (PCBs) are a subset of the synthetic organic chemicals known as chlorinated hydrocarbons. Concern over PCBs toxicity, persistence (chemical stability) in the environment and bioconcentration in aquatic organisms has led to prohibitions on PCBs.

8. Rising groundwater and swimming pool water have been found to be sources of pollutants such as salts (chloride). Salts increase the salinity of otherwise freshwater systems and disrupt physiological processes. The Regional Water Board has waterbodies listed on the CWA § 303(d) list for impairment due to salts and has adopted Basin Plan amendments to include Total Maximum Daily Loads (TMDLs) for salts. This Order includes provisions to control the discharges from these activities in order to directly or indirectly reduce or eliminate the discharge of salts to fresh water systems where salts may impair water quality and beneficial uses.

9. Trash and debris are pervasive pollutants which accumulate in streams, rivers, bays, and ocean beaches throughout Southern California. They pose a serious threat to our oceans and coasts, navigation, biological resources, recreation, human health and safety, aesthetics, and economies.

10. Municipal storm water (wet weather) and non-storm water (dry weather) discharges may contain pollutants that cause or threaten to cause an exceedance of the water quality standards, as outlined in the Los Angeles Region's Basin Plan. Wet weather and dry weather discharges from the MS4 are subject to conditions and requirements established in the Basin Plan for point source discharges. Discharges from the MS4 may not cause or contribute to exceedances of water quality standards.

11. Biological communities act to integrate the effects of water quality conditions in a stream by responding with changes in their population abundances and species composition over time. These populations are sensitive to multiple aspects of water and habitat quality, and provide expressions of ecological health easier to understand than the results of chemical and toxicity tests. Biological assessments and criteria address the cumulative impacts of all stressors, especially habitat degradation, and chemical contamination, which result in a loss of biological diversity. Biological information can help provide an ecologically based assessment of the status of a waterbody. Bioassessment is a cost-effective tool and protocol for assessing the biological and physical habitat conditions of streams and rivers for evaluation of the overall health of a watershed. The Principal Permittee consents to participate in the Southern California Storm Water Monitoring Coalition (SMC) Southern California Regional Bioassessment Monitoring Program.

12. The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters *(Managing Runoff to Protect Natural Streams: The Latest Development on Investigation and Management of Hydromodification in California; Stein, E. et al, December 2005*; *Effect of Increase in Peak Flows and Imperviousness on the Morphology of Southern California Streams; Coleman, D., April 2005).* Significant declines in the biological integrity and physical

habitat of streams and other receiving waters have been found to occur with as little as 3-10 percent conversion from natural to impervious surfaces in a subwatershed. Percentage impervious cover is a one indicator and predictor of potential water quality degradation expected from new development.

13. Studies indicate that facilities with paved surfaces subject to frequent motor vehicular traffic (such as: strip malls, parking lots, commercial business parks, and fast food restaurants), or facilities that perform vehicle repair, maintenance, or fueling (automotive service facilities) are potential sources of POC in storm water (*California Stormwater Quality Association, Stormwater Best Management Practice Handbook, Municipal, January 2003).*

14. Retail Gasoline Outlets (RGOs) are points of convergence for vehicular traffic and are similar to parking lots and urban roads. Studies indicate that storm water discharges from RGOs have high concentrations of hydrocarbons and heavy metals (*California Stormwater Quality Association, Stormwater Best Management Practice Handbook, Municipal, January 2003).*

15. The industries and businesses listed in this Order that are to be inspected by Permittees have the potential to discharge contaminated storm water into the MS4. This storm water is an environmental threat because it can adversely impact public health and safety, and the quality of receiving waters. For example, pretreatment program compliance inspections and audits performed in the Los Angeles and Ventura Counties indicate that automotive service and food service facilities sometimes discharge polluted storm water to the MS4s. The POC in such wash waters include oil and grease, toxic chemicals, and food waste. Spills from clogged sanitary sewer lines have a high likelihood to reach the receiving waters via MS4s. Overall, the most common POC identified in storm water discharge to the MS4s are: (i) heavy metals, (ii) oil and grease/ PAHs, (iii) sediments, (iv) oxygen demanding substances, (v) litter/ trash/ debris, (vi) nutrients, (vii) other toxic materials, such as pesticides. Municipal storm water monitoring data and industrial storm water monitoring data indicate that industrial and commercial sites continue to contribute significant quantities of pollutants in storm water runoff.

16. Development and urbanization increase pollutant loads, volume, and discharge velocity. First, natural vegetated

pervious ground cover is converted to impervious surfaces (paved) such as highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, impervious surfaces (such as pavement and concrete) can neither absorb water nor remove pollutants, and thus the natural purification characteristics are lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants. Development and urbanization especially threaten environmentally sensitive areas. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particularly sensitive environment. These environmentally sensitive areas (ESAs) designated by the State in the Ventura County watershed are defined in Part 7 (Definitions).

17. The implementation of Low Impact Development (LID) techniques across the United States and Canada has demonstrated that the proper implementation of LID techniques not only results in water quality protection benefits and in a reduction of the cost of land development and construction but also bears other positive attributes that go beyond economic benefits such as enhanced property values, improved habitat, aesthetic amenities, and improved quality of life. Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices, USEPA Doc No. EPA 841-F-07-006, December 2007. Further, properly implemented LID techniques reduce the volume of runoff leaving a newly developed or re-developed area thereby lowering the peak rate of runoff, and thus minimizing the adverse affects of hydromodification on stream habitat. A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption, Low Impact Development Center and State of California, State Water Resources Control Board, December 2007. The requirements of this Order facilitate the implementation of LID strategies to protect water quality, reduce runoff volume, and to benefit from these additional enhancements.

18. The Regional Water Board adopted a Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated

Lands (Order No. R4-2005-0080) on November 3, 2005. The objective of the program is to monitor runoff from irrigated agriculture facilities in the coastal watersheds of Ventura and Los Angeles Counties. The Basin Plan, which designates beneficial uses and establishes water quality objectives for the Region, recognizes that agricultural activities can generate pollutants such as sediment, pesticides, and nutrients that upon discharge to receiving water can degrade water quality and impair beneficial uses. A category identified by the Conditional Waiver as a source of pollutants is nursery operations. This Order includes requirements for the municipal operator to confirm that nursery operators implement pollutant reduction and control measures with the objective of reducing pollutants in storm water runoff discharges.

19. Staff finds there is a growing acceptance by stormwater professionals to integrate LID principles into stormwater management programs and MS4 permits. However, there remains significant controversy regarding the appropriate requirements and metrics for LID. At the heart of this controversy is a dispute regarding the feasibility and effectiveness of requiring a fixed volume of stormwater to be captured and retained onsite for infiltration, reuse, and evapotranspiration, as opposed to permitting a portion of the stormwater to be released off site after it is treated, when it is infeasible to retain the required stormwater on site due to site specific conditions.

    Staff has reviewed extensive technical literature regarding this issue (e.g. R. Horner, *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County* (February 2007); E. Strecker, A. Poresky, D. Christsen, *Memorandum: Rainwater Harvesting and Reuse Scenarios and Cost Consideration*, (April, 2009). Staff finds that there is consensus in the technical community that site conditions and the type of development can limit the feasibility of retaining, infiltrating, and reusing stormwater at sites due to a variety of site specific conditions. Factors that affect the feasibility of a fixed volume capture standard include, but are not limited to: soils infiltration capacity, subsurface pollution, and locations in urban core centers.

    Regarding the effects of capturing a fixed stormwater volume on site, Staff finds the fixed volume approach may be ignoring basic hydrological principles that relate the feasible infiltration volume to the infiltration capacity of local soils.

Requirements to capture a fixed volume on site could disturb the natural water balance and lead to unintended engineering and hydrologic consequences. For example, a typical hydrological condition in Ventura County is one of successive storms during the winter which may exceed the stormwater capacity that can be retained on site. This may result in ponded water on site with attendant health and safety risks, saturation of the near surface soils, and reduction of water resources in Regional waterbodies. These effects could damage site structures, increase groundwater pollution by forcing enhanced pollution spreading, or destroy aquatic habitat. Staff finds these reasonably potential effects are not well evaluated scientifically. Finally, staff cannot find that a fixed retention volume versus a standard that attempts to release surface flows at a predevelopment level would result in a greater reduction of stormwater pollution.

20. Research conducted on the contribution of aerial deposition of trace heavy metals in Los Angeles County watersheds indicates that dry indirect deposition may account for a significant load of pollutants into surface waters. Similar patterns of aerial deposition likely occur in Ventura County. Of the atmospherically deposited pollutants on the watersheds, ten to twenty percent may account for the total load for copper, zinc, nickel, lead, and chromium to the waterbodies. Land reservoirs and sequestration may account for the remaining eighty to ninety percent of the atmospherically deposited pollutants on the watersheds. Emissions of semi-volatile organics such as polycyclic aromatic hydrocarbons (PAHs) and pesticides and their subsequent deposition may contribute to the contamination of receiving waters but appear to be less significant. The remaining percentage is stored in land reservoirs and eventually shows up in receiving waters.

C. Permit Background

1. The essential components of the Storm Water Management Program, as required by the Code of Federal Regulations (CFR) [40 CFR122.26(d)] are:
   (a) Adequate Legal Authority.
   (b) Fiscal Resources.
   (c) Storm Water Quality Management Program (SMP)
      (1) Public Information and Participation Program
      (2) Industrial/ Commercial Facilities Program
      (3) Planning and Land Development Program
      (4) Development Construction Program

(5) Public Agency Activities Program
(6) Illicit Connection and Illicit Discharges Elimination Program

(d) Reporting Program (Monitoring Report and Program Report)

2. The Ventura County SMP, dated November 2001 (revision 2) identifies seven program areas, which are listed below and were previously approved under Board Order No. 00-108. For purposes of consistency, they are titled as follows:
(a) Ventura County SMP.
(1) Program Management
(2) Programs for Residents
(3) Programs for Industrial/ Commercial Businesses
(4) Programs for Planning and Land Development
(5) Programs for Construction Sites
(6) Programs for Public Agency Activities
(7) Programs for Illicit Connections/ Illegal Discharges
(b) For purposes of region-wide consistency, the program titles are revised and consolidated into the six areas listed in the preceding C.1(c). All Permittee storm water documents submitted to the Regional Water Board are to follow the organization enumerated in C.1(c).

3. The Permittees filed a Report of Waste Discharge (ROWD), dated January 26, 2005. The Permittees applied for renewal of their waste discharge requirements for a 5-year period, which serves as an NPDES permit to discharge wastes to surface waters.

4. The Regional Water Board reviewed the ROWD and determined it to be partially complete under the reapplication policy for MS4s issued by the United States Environmental Protection Agency (U.S. EPA) (61 Fed. Reg. 41697). The Regional Water Board has prepared this Order so that implementation of provisions contained in this Order by Permittees will meet the requirements of the federal NPDES regulations at 40 CFR122.26.

5. The Permittees ROWD contained a proposed Storm Water Management Program and a Monitoring Program to be considered by the Regional Water Board for incorporation into an MS4 NPDES Permit as permit conditions and to demonstrate compliance with federal law.

6. To-date, the monitoring program has consisted of mass emission, receiving water (tributaries), and land-use

monitoring stations, toxicity testing, special studies for bioassessment of the Ventura River and hydrology, identification of ESAs, implementation of the Storm Water Quality Urban Impact Mitigation Plan (SQUIMP), and has provided support for volunteer monitoring programs. This Order requires a monitoring program consisting of mass emission, toxicity, TMDL storm water (wet weather) MS4 water quality-based effluent limits, TMDL non-storm water (dry weather) MS4 water quality-based effluent limits, Pyrethroid assessment study, continuation of the hydromodification study, low impact development study, and participation in the Southern California Regional Bioassessment Program and Southern California Bight Project (SCBP).

7. The Principal Permittee is a member of the Southern California Coastal Water Research Project (SCCWRP) Commission. The Principal Permittee also participates in the Regional Monitoring Programs and research partnerships, such as the Southern California Storm Water Monitoring Coalition (SMC) and the Bioassessment Working Group.

D. Permit Coverage

1. The area covered by this Order includes all areas within Ventura County boundaries and all areas within each co-permittee's boundaries (see Figure 1) that drain into the MS4.

2. The Permittees covered under this Order were designated on a system-wide basis under Phase I of the CWA § 402(p)(3)(B)(i). The action of covering all Ventura County municipalities under a single MS4 permit on a system-wide basis was consistent with the provisions of 40 CFR122.26(a)(3)(iv), which states that one permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems; and the Regional Water Board may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

3. Federal, State, Regional, or local entities within the Permittees' boundaries or in jurisdictions outside the Ventura County Watershed Protection District, and not currently named in this Order, may operate storm drain facilities and/ or discharge storm water to storm drains and receiving waters

covered by this Order. The Permittees may lack legal jurisdiction over these entities under State and Federal constitutions. The Regional Water Board will coordinate with these entities to implement programs that are consistent with the requirements of this Order. The Regional Board may consider such facilities for coverage under its NPDES permitting scheme pursuant to USEPA Phase II storm water regulations.
Permittees have expressed their intention to work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system. Permittees shall make good faith efforts to control the contribution of pollutants to the MS4 from non-permittee dischargers such as Caltrans, the U.S. Department of Defense, and other state and federal facilities.

4. TMDLs are numerical calculations of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point sources (Waste Load Allocation (WLA) and non-point sources (Load Allocation (LA)). Discharges from the MS4s are considered point sources discharges, because the MS4 is a point source.

5. This Order incorporates applicable WLAs that have been adopted by the Regional Water Board and have been approved by the Office of Administrative Law and the U.S. EPA. The TMDL WLAs in the Order are expressed as water quality-based effluent limits in a manner consistent with the assumptions and requirements of the TMDL from which they are derived.

6. The CWA and the California Water Code contain specific provisions on how wastewater discharges from point sources are to be permitted. Stormwater discharges (both dry weather and wet weather) are considered point source discharges.

7. Permittees should work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements.

E. Federal, State and Regional Regulations

1. The Water Quality Act of 1987 added § 402(p) to the CWA (33U.S.C. § 1251-1387). This section requires the U.S. EPA

to establish regulations setting forth NPDES requirements for storm water discharges in 2 phases.

(a) U.S. EPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, including interconnected systems and storm water discharges associated with industrial activities, including construction activities. The Phase 1 Final Rule was published on November 16, 1990 (55 Fed. Reg. 47990).

(b) U.S. EPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (population of less than 100,000), small construction projects (less than 5 acres), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the U.S. EPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the U.S. The Phase II Final Rule was published on December 8, 1999 (64 Fed. Reg. 68722).

2. The U.S. EPA published an 'Interpretative Policy Memorandum on Reapplication Requirements for MS4 permits on August 9, 1996 (61 Fed. Reg. 41697). This policy requires that MS4 reapplication for reissuance for a subsequent five-year permit term contain certain basic information and information for proposed changes and improvements to the storm water management program and monitoring program.

3. The U.S. EPA has entered into a Memorandum of Agreement (MOA) with the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service for enhancing coordination regarding the protection of endangered and threatened species under section 7 of the Endangered Species Act, and the CWA's water quality standards and NPDES programs. Among other actions, the MOA establishes a framework for coordination of actions by the U.S. EPA, the Services, and CWA delegated States on CWA permit issuance under § 402 of the CWA [66 Fed. Reg. 11202-11217].

4. The CWA allows the U.S. EPA to authorize states with an approved environmental regulatory program to administer the NPDES program in lieu of the U.S. EPA. The State of California is a delegated State. The Porter-Cologne Water Quality Control Act (California Water Code) authorizes the State Water Resources Control Board (State Water Board),

through the Regional Water Boards, to regulate and control the discharge of wastes that could affect the quality of waters of the State, including waters of the United States, and tributaries thereto.

5. Under CWA § 303(d) of the CWA, States are required to identify a list of impaired water-bodies and develop and implement TMDLs for these waterbodies (33 USC § 1313(d)(1)). The most recent 303(d) list's U.S. EPA approval date was June 28, 2007. The U.S. EPA entered into a consent decree with the Natural Resources Defense Council (NRDC), Heal the Bay, and the Santa Monica Baykeeper on March 22, 1999, under which the Regional Water Board must adopt all TMDLs for the Los Angeles Region within 13 years from that date. This Order incorporates provisions incorporating approved WLAs for municipal storm water discharges and requires amending the SMP after subsequent pollutant loads have been allocated and approved.

6. Collectively, the restrictions contained in the TMDL Provisions for Storm Water (Wet Weather) Discharges and Non-Storm Water (Dry Weather) Discharges of this Order on individual pollutants are no more stringent than required to implement the provisions of the TMDL, which have been adopted and approved in a manner that is consistent with the CWA. Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirements of the available WLAs in TMDLs (40 CFR122.44(d)(1)(vii)(B)).

7. This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons, including, but not limited to, the following. This Order implements federally mandated requirements under CWA § 402, subdivision (p)(3)(B)(33 U.S.C. § 1342(p)(3)(B)) This includes federal requirements to effectively prohibit non-storm water discharges, to reduce the discharge of pollutants to the maximum extent practicable, and to include such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. Federal cases have held these provisions require the development of permits and permit provisions on a case-by-case basis to satisfy federal requirements. (Natural Resources Defense Council, Inc. v. U.S. E.P.A. (9th Cir. 1992) 966 F.2d 1292, 1308, fn. 17.) The authority exercised under this Order is not reserved state authority under the Clean Water Act's savings clause (cf.

Burbank v. State Water Resources Control Bd. (2005) 35 Cal.4th 613, 627-628 [relying on 33 U.S.C. § 1370, which allows a state to develop requirements which are not "less stringent" than federal requirements]), but instead, is part of a federal mandate to develop pollutant reduction requirements for municipal separate storm sewer systems. To this extent, it is entirely federal authority that forms the legal basis to establish the permit provisions. (See, City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region (2006) 135 Cal.App.4th 1377, 1389; Building Industry Ass'n of San Diego County v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 866, 882-883.)

Likewise, the provisions of this Order to implement TMDLs are federal mandates. The CWA requires TMDLs to be developed for waterbodies that do not meet federal water quality standards (33 U.S.C. § 1313(d)). Once the U.S. EPA or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable wasteload allocation. (40 CFR122.44(d)(1)(vii)(B)).

Second, the local agency Permittees' obligations under this Order are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges. With a few inapplicable exceptions, the Clean Water Act regulates the discharge of pollutants from point sources (33 U.S.C. § 1342) and the Porter-Cologne regulates the discharge of waste (Wat. Code, § 13263), both without regard to the source of the pollutant or waste. As a result, the "costs incurred by local agencies" to protect water quality reflect an overarching regulatory scheme that places similar requirements on governmental and nongovernmental dischargers. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58 [finding comprehensive workers compensation scheme did not create a cost for local agencies that was subject to state subvention].)

The Clean Water Act and the Porter-Cologne Water Quality Control Act largely regulate storm water with an even hand, but to the extent there is any relaxation of this even-handed regulation, it is in favor of the local agencies. Except for municipal separate storm sewer systems, the Clean Water Act requires point source dischargers, including discharges of storm water associated with industrial or construction activity, to comply strictly with water quality standards. (33 U.S.C.

§ 1311(b)(1)(C), *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1164-1165 [noting that industrial storm water discharges must strictly comply with water quality standards].) As discussed in prior State Water Resources Control Board decisions, in many respects this Order does not require strict compliance with water quality standards. (SWRCB Order No. WQ 2001-15, p. 7.) The Order, therefore, regulates the discharge of waste in municipal storm water more leniently than the discharge of waste from non-governmental sources.

Third, the local agency Permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order subject to certain voting requirements contained in the California Constitution. (See California Constitution XIII D, section 6, subdivision (c); see also *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal. App. 4th 1351, 1358-1359.). The fact sheet demonstrates that numerous activities contribute to the pollutant loading in the municipal separate storm sewer system. Local agencies can levy service charges, fees, or assessments on these activities, independent of real property ownership. (See, e.g., *Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 842 [upholding inspection fees associated with renting property].) The ability of a local agency to defray the cost of a program without raising taxes indicates that a program does not entail a cost subject to subvention. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

Fourth, the Permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)) and in lieu of numeric restrictions on their discharges. (See finding 5., supra.) To the extent that the local agencies have voluntarily availed themselves of the permit, the program is not a state mandate. (Accord *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107-108.) Likewise, where MS4 Permittees are regulated under a Best Management Practices (BMP) based storm water management program rather than end-of-pipe numeric limits, there exists no compulsion of a specific regulatory scheme that would violate the 10th Amendment to the United States Constitution. (See *City of Abilene v. U.S. E.P.A.* (5th Cir. 2003) 325 F.3d 657, 662-663 [noting that municipalities can choose between a management permit or a permit with numeric limits].) The local agencies'

voluntary decision to file a report of waste discharge proposing a program-based permit is a voluntary decision not subject to subvention. (See *Environmental Defense Center v. USEPA* (9th Cir. 2003) 344 F.3d 832, 845-848.)

Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under state law predates the enactment of Article XIIIB, Section (6) of the California Constitution.

8. Under § 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Coastal States with approved coastal zone management programs are required to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: 1) agriculture; 2) silviculture; 3) urban; 4) marinas; and 5) hydromodification. This Waste Discharge Requirement addresses the management measures required for the urban category and the hydromodification category, with the exception of septic systems.

9. The Regional Water Board addresses septic systems through the administration of non-Chapter 15 regulatory programs and the implementation of Regional Water Board Order No.R4-2004-0146. Septic systems are also addressed under State Assembly Bill (AB) 885 (2000). The Regional Water Board will implement and enforce regulations issued by the State Board pursuant to AB 885. Taken together, these State and Local agency requirements when imposed on septic system operators are expected to reduce the bacterial contamination of storm water from improperly maintained septic systems.

10. The State Water Board has issued waste discharge requirements for discharges from utility vaults (CAG990002). The Regional Water Board has issued waste discharge requirements for discharges from well heads and hydrostatic pipe testing (CAG674001). These discharges to the MS4 shall be conducted under coverage of a separate NPDES permit specific to that activity.

11. On May 18, 2000, the U.S. EPA established numeric criteria for priority toxic pollutants for the State of California (California Toxics Rule (CTR) 65 Fed. Reg. 31682 (40 CFR131.38) for the protection of human health and aquatic life. These apply as ambient water quality criteria for inland surface waters, enclosed bays and estuaries.

12. The State Water Board adopted a revised Water Quality Control Plan for Ocean Waters of California (Ocean Plan) in 2005. The California Ocean Plan establishes water quality objectives for California's ocean waters and provides the basis for regulation of wastes discharged into the State's coastal waters. It applies to point and nonpoint source discharges. The Ocean Plan identifies the applicable beneficial uses of marine waters that include preservation and enhancement of designated Areas of Special Biological Significance (ASBS) (now called "State Water Quality Protection Areas") and establishes a set of narrative and numerical water quality objectives designed to protect beneficial uses. The SWRCB adopted the California Ocean Plan, and both the SWRCB and the six coastal Regional Water Quality Control Boards (RWQCBs) implement and interpret the California Ocean Plan.

13. This Regional Water Board adopted a revised Water Quality Control Plan (Basin Plan) for the Los Angeles Region on June 13, 1994. The Basin Plan specifies the beneficial uses of Ventura County waterbodies and their tributary streams, and contains both narrative and numerical water quality objectives for these receiving waters. The following beneficial uses identified in the Basin Plan apply to all or portions of each watershed covered by this Order:
    (a) Municipal and domestic supply
    (b) Agricultural supply
    (c) Industrial service supply
    (d) Industrial process supply
    (e) Ground water recharge
    (f) Freshwater replenishment
    (g) Navigation
    (h) Hydropower generation
    (i) Water contact recreation
    (j) Non-contact water recreation
    (k) Ocean commercial and sport fishing
    (l) Warm freshwater habitat
    (m) Cold freshwater habitat
    (n) Preservation of Areas of Special Biological Significance
    (o) Saline water habitat
    (p) Wildlife habitat
    (q) Preservation of rare and endangered species
    (r) Marine habitat
    (s) Fish migration
    (t) Fish spawning
    (u) Shellfish harvesting

14. On March 22, 1999 the Consent Decree in Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. v. Browner, Case No. 98-4825 SBA was approved. Under Establishment of TMDLs- The parties understand that California has the initial opportunity pursuant to § 303(d) of the CWA to adopt and submit to U.S. EPA for approval TMDLs to be established under this Consent Decree. TMDLs developed by Regional Water Boards are generally adopted through Basin Plan amendments. Basin plan amendments adopted by the State Board pursuant to Water Code section 13246, and the regulatory portions must be approved by the Office of Administrative Law pursuant to Government Code section 11353(b). TMDLs established pursuant to CWA section 303(d)(1) must be submitted to U.S. EPA for approval pursuant to section 303(d)(2), and incorporated into the state's water quality management plan

15. The Regional Water Board has adopted amendments to the Basin Plan, to incorporate TMDLs for the following:
    (a) The following TMDLs have been or will be incorporated into the Basin Plan within the term of the Order.
        (1) Santa Clara River - Nitrogen Compounds
            (A) Regional Water Board Resolution No. 2003-011
            (B) State Water Board Resolution No. 2003-0073
            (C) OAL file No. 04-0123-35
            (D) U.S. EPA approval date March 18, 2004
            (E) Final fee exemption date March 23, 2004 (effective date).
            (F) Compliance is 1 year after effective date (March 23, 2005)

        (2) Malibu Creek and Lagoon - Bacteria.
            (A) Regional Water Board Resolution No. 2004-019
            (B) State Water Board Resolution No. 2005-0072
            (C) OAL file No. 05-1018-03 S
            (D) U.S. EPA approval date January 10, 2006
            (E) Final fee exemption date January 24, 2006 (effective date)
            (F) Compliance for Summer Dry is 3 years after effective date (January 24, 2009)
            (G) Compliance for Winter Dry is 6 years after effective date (January 24, 2012)

(H) Compliance for Wet Weather is 10 years after effective date (January 24, 2016), which is beyond the term of this Order

(3) Toxicity, Chlorpyrifos and Diazinon in the Calleguas Creek, Its Tributaries and Mugu Lagoon.
- (A) Regional Water Board Resolution No. 2005-009
- (B) State Water Board Resolution No. 2005-0067
- (C) OAL file No. 05-1110-02 S
- (D) U.S. EPA approval date March 14, 2006
- (E) Final fee exemption date March 24, 2006 (effective date)
- (F) Compliance for Toxicity and Interim WLA is effective date (March 24, 2006)
- (G) Compliance for Final WLA is 2 years after effective date (March 24, 2008)

(4) Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs), and Siltation in Calleguas Creek, Its Tributaries and Mugu Lagoon.
- (A) Regional Water Board Resolution No. 2005-010
- (B) State Water Board Resolution No. 2005-0068
- (C) OAL file No. 05-1206-03 S
- (D) U.S. EPA approval date March 14, 2006
- (E) Final fee exemption date March 24, 2006 (effective date)
- (F) Compliance for Interim WLA is effective date (March 24, 2006)
- (G) Compliance for Final WLA is 20 years after effective date (March 24, 2026), which is beyond the term of this Order

(5) Calleguas Creek Watershed Metals
- (A) Regional Water Board Resolution No. 2006-012
- (B) State Water Board Resolution No. 2006-0078
- (C) OAL file No. 06-1222-015 S
- (D) U.S. EPA approval date March 26, 2007
- (E) Final fee exemption date March 27, 2007 (effective date)
- (F) Compliance for Interim WLA is effective date (March 27, 2007)
- (G) Compliance for Final WLA is Within 15 years after the effective date (March 27, 2022), which is beyond the term of this Order

(6) Revolon Slough & Beardsley Wash Trash TMDL
- (A) Regional Water Board Resolution No. 2007-007
- (B) State Water Board Resolution No 2007-0076
- (C) OAL file No 2007-1227-05 S
- (D) U.S. EPA approval date February 27, 2008
- (E) Final fee exemption date March 6, 2008 (effective date)
- (F) Compliance for Trash Monitoring & Reporting Plan Submittal is 6 months from effective date (September 6, 2008)
- (G) Compliance for Final WLA is 8 years from effective date (March 6, 2016)

(7) Ventura River Estuary Trash TMDL
- (A) Regional Water Board Resolution No. 2007-008
- (B) State Water Board Resolution No 2007-0072
- (C) OAL file No 2007-1227-01 S
- (D) U.S. EPA approval date February 27, 2008
- (E) Final fee exemption date March 6, 2008 (effective date)
- (F) Compliance for Trash Monitoring & Reporting Plan Submittal is 6 months from effective date (September 6, 2008)
- (G) Compliance for Final WLA is 8 years from effective date (March 6, 2016)

(8) Harbor Beaches of Ventura County Bacteria TMDL
- (A) Regional Water Board Resolution No. 2007-017
- (B) State Water Board Resolution No 2008-0072
- (C) OAL file No 2007-1023-01 S
- (D) U.S. EPA approval date December 18, 2008
- (E) Final fee exemption date January 17, 2009 (effective date)

16. The Regional Water Board adopted and approved requirements for new development and significant redevelopment projects in Ventura County to control the discharge of storm water pollutants in post-construction storm water, on January 26, 2000, in Board Resolution No. R-00-02. The Regional Water Board Executive Officer issued the approved Standard Urban Storm Water Mitigation Plans

(SUSMPs) on March 8, 2000 for Los Angles County and the Cities in Los Angeles County. Since 2000, new development and redevelopment water quality criteria have been implemented by the Permittees to be consistent with SUSMP. The State Board affirmed the Regional Water Board action and SUSMPs in State Board Order No. WQ 2000-11, issued on October 5, 2000.

(a) A statewide policy memorandum (dated December 26, 2000), which interprets the Order to provide broad discretion to Regional Water Boards and identifies potential future areas for inclusion in SUSMPs and the types of evidence and findings necessary. Such areas include ministerial projects, projects in environmentally sensitive areas, and water quality design criteria for Retail Gasoline Outlets (RGOs, see part 7 for definition). The Regional Water Board properly justified the extensions of SUSMPs and water quality criteria to ministerial projects, projects in environmentally sensitive areas, and RGOs, during the adoption of Regional Water Board Order 01-182. The Regional Water Board's action was upheld by the County of Los Angeles Superior Court (In Re: *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985).

(b) The State Water Board's Chief Counsel interpreted the Order to encourage regional solutions and endorsed a mitigation fund or "bank" as alternatives for new development and significant redevelopment. The Regional Water Board has included provisions for regional solutions and the establishment of a mitigation bank in this Order.

17. The Regional Water Board supports Watershed Management planning to address water quality protection in the region. The objective of the Watershed Management planning is to provide a comprehensive and integrated strategy towards water resource protection, enhancement, and restoration while balancing economic and environmental impacts within a hydrologically defined drainage basin or watershed. It emphasizes cooperative relationships between regulatory agencies, the regulated community, environmental groups, and other stakeholders in the watershed to achieve the greatest environmental improvements with available resources.

18. To facilitate compliance with federal regulations, the State Water Board has issued the following 4 Statewide General NPDES Permits associated with storm water:

(a) Industrial General Permit (IASGP- Industrial Activities Storm Water General Permit), NPDES No. CAS000001, issued on November 19, 1991, reissued on September 17, 1992 and April 17, 1997, currently under review for reissuance.
(b) Construction General Permit (CASGP- Construction Activities Storm Water General Permit), NPDES No. CAS000002, issued on August 20, 1992, reissued August 19, 1999, currently under review for reissuance.
(c) Small Linear Underground/ Overhead Construction Projects General Permit (small LUPs), NPDES No. CAS000005, issued on June 18, 2003.
(d) Small MS4 Permit WQ Order No. 2003-0005-DWQ, NPDES No. CAS000004, adopted on April 30, 2003.

19. Facilities discharging storm water associated with industrial activities, construction projects that disturb one or more acres of soil, or construction projects that disturb less than one acre but are part of a larger common plan of development or sale that in total disturbs 1 or more acres, and construction activities associated with small linear underground/ overhead projects that result in land disturbances greater than one acre, but less than five acres (small LUPs), are all required to obtain individual NPDES permits for storm water discharges, or be covered by the statewide General Permits by completing and filing a Notice of Intent (NOI) with the State Board. The U.S. EPA guidance anticipates coordination of the state-administered programs for industrial and construction activities with the local agency program to reduce pollutants in storm water discharges to the MS4.

20. State Water Board Resolution No. 68-16 contains the state Antidegradation Policy, titled "Statement of Policy with Respect to Maintaining High Quality Waters in California" (Resolution 68-16), which applies to all waters of the state, including ground waters of the state, whose quality meets or exceeds (is better than) water quality objectives. Resolution No. 68-16 is considered to incorporate the federal Antidegradation Policy (40 CFR131.12) where the federal policy applies, (State Water Board Order WQO 86-17). Administrative policies that implement both, federal and state antidegradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in violation of Antidegradation Policies through cumulative effects, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.

(a) Federal Antidegradation Policy (40 CFR131.12) states that the State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:
(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.
(3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.
(4) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

(b) State Water Board Resolution No. 68-16 establishes essentially a 2-step process for compliance with the policy.
  (1) Step 1- if a discharge will degrade high quality water, the discharge may be allowed if any change in water quality:
    (A) Will be consistent with maximum benefit to the people of the State.
    (B) Will not unreasonably affect present and anticipated beneficial use of such water.
    (C) Will not result in water quality less than that prescribed in state policies (e.g., water quality objectives in Water Quality Control Plans).

(2) Step 2- any activities that result in discharges to high quality waters are required to:
   (A) Meet waste discharge requirements that will result in the best practicable treatment or control of the discharge necessary to avoid a pollution or nuisance.
   (B) Maintain the highest water quality consistent with the maximum benefit to the people of the State.

21. The State Water Board on June 17, 1999, adopted Order No. WQ 99-05, which specifies standard receiving water limitation language to be included in all municipal storm water permits issued by the State and Regional Water Boards.

22. Cal. Water Code § 13263(a) requires that waste discharge requirements issued by Water Boards shall implement any relevant water quality control plans that have been adopted; shall take into consideration the beneficial uses to be protected and the water quality objectives reasonably required for that purpose; other waste discharges; and the need to prevent nuisance.

23. Clean Water Act section 402(p)(3)(B)(iii) requires municipal separate storm sewer system (MS4) operators to control pollution in storm water to the "maximum extent practicable" (MEP). The MEP requirement is analogous to a technology-based requirement in that it focuses upon the feasibility of pollutant reduction measures rather than achievement of water quality standards in the receiving waters to achieve improvements in the quality of the storm water that is discharged. Compliance with the MEP requirement can range from implementation of structural and nonstructural best management practices to installation of end-of-pipe treatment systems. MEP generally provides the MS4 operators the flexibility to determine what controls should be implemented through the development of a storm water management plan, subject to the Regional Board's approval. Nevertheless, MEP does not define the limits of pollution control measures that may be required of MS4 operators, and the requirement to implement controls that reduce pollutants to the MEP is not limited by the goal of attaining water quality standards. In some circumstances, compliance with MEP may result in controls more stringent than applicable WQS, and in others, less stringent. The Regional Board may use its discretion to impose other provisions beyond MEP, as it determines appropriate for the control of pollutants, including ensuring

strict compliance with water quality standards. (Defenders of Wildlife v. Browner (1999) 191 F.3d 1159, 1168.)

24. The California Supreme Court has ruled that although Water Code section 13263 requires the Water Boards to consider the factors set forth in Water Code section 13241 when issuing an NPDES permit, the Water Boards may not consider the factors to justify imposing pollutant restrictions that are less stringent than the applicable federal regulations require (City of Burbank v. State Water Resources Control Bd. (2005) 35 Cal.4th 613). However, when the pollutant restrictions in an NPDES are more stringent than federal law requires, Water Code section 13263 requires that the Water Boards consider the factors described in section 13241 as they apply to those specific restrictions.

25. The City of Burbank case related to NPDES permits for publicly owned treatment works, not permits for municipal separate storm sewer systems (MS4s). Among other requirements, federal law requires MS4 permits to include requirements to effectively prohibit non-storm water discharges into the storm sewers, in addition to requiring controls to reduce the discharge of pollutants to the maximum extent practicable. Therefore, a 13241 analysis is not required for permit requirements that implement the effective prohibition on the discharge of non-storm water into the MS4, or for practicable controls to reduce the discharge of pollutants to the maximum extent, as those requirements are mandated by federal law.

26. The requirements in this Order may be more specific or detailed than those enumerated in federal regulations under 40 CFR122.26 or in U.S. EPA guidance. However, the requirements have been designed to be consistent with and within the federal statutory mandates described in CWA § 402(p)(3)(B)(ii) and (iii) and the related federal regulations. Consistent with federal law, all of the conditions in this permit could have been included in a permit adopted by U.S. EPA in the absence of the in lieu authority of California to issue NPDES permits.

27. The Board finds that all requirements in this order are practicable. Moreover, while commenters have alleged that the permit requirements are "beyond MEP," no commenter has presented evidence that demonstrates that any particular permit requirement is not actually practicable.

28. Notwithstanding findings 23 through 27, the Regional Board has developed an economic analysis of the permit's requirements, consistent with Water Code section 13241. That analysis is contained in the "Economic Considerations of the Proposed Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges form the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein, June 2, 2008, which is contained in the administrative record for this Order. The Regional Board has considered all of the evidence that has been presented regarding the 13241 factors in adopting this permit, both as contained in the economic analysis and as reflected in the fact sheet and comments (and responses thereto) submitted to the many drafts of this permit. The Regional Board finds that the requirements in this Order are reasonably necessary to protect beneficial uses identified in the Basin Plan, and the economic information related to costs of compliance and other 13241 factors are not sufficient to justify failing to protect those beneficial uses. Where appropriate, additional time to implement certain measures and achieve water quality objectives can be provided through the iterative storm water management plan process.

F. Implementation

1. The California Environmental Quality Act (CEQA) (Cal. Pub. Resources Code § 2100 et seq.) requires that public agencies consider the environmental impacts of the projects they approve for development. CEQA applies to projects that are considered discretionary (a governmental agency can use its judgment in deciding whether and how to carry out or approve a project, § 15357) and does not apply to ministerial projects (the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, § 15369). A ministerial project may be made discretionary by adopting local ordinance provisions or imposing conditions to create decision-making discretion in approving the project. In the alternative, Permittees may establish standards and objective criteria administratively for storm water mitigation for ministerial projects. For water quality purposes regardless of whether a project is discretionary or ministerial, the Regional Water Board considers that all new development and significant redevelopment activity in specified categories, that receive approval or permits from a municipality, are subject to storm

water mitigation requirements in a manner that is consistent with and complies with the provisions of CEQA.

2. The objective of this Order is to ensure that discharges from the MS4 in Ventura County comply with water quality standards, including protecting the beneficial uses of receiving waters. To meet this objective, the Order requires that Best Management Practices (BMPs) will be implemented to reduce the discharge of pollutants in storm water to the maximum extent practicable (MEP), and achieve water quality objectives and standards. The U.S. EPA envisioned that municipal storm water programs would be implemented in an iterative manner and improved with each iteration by using information and experience gained during the previous permit term (*Interpretative Policy Memorandum on Reapplication Requirements for MS4 permits* - 61 Fed. Reg. 41697). Municipalities are required to evaluate what is effective and make improvements in order to protect beneficial uses of receiving waters. This Order requires implementation of an effective combination of pollution control and pollution prevention measures, education, public outreach, planning, and implementation of source control BMPs and Structural and Treatment Control BMPs. The better–tailored BMPs combined with the performance objectives outlined in this Order have the purpose of attaining water quality objectives and standards (*Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*- 61 Fed. Reg. 43761). Where WLAs have been adopted for storm water (wet weather) and non-storm water (dry weather) discharges from MS4s, this Order requires Permittees to implement controls to achieve the WLAs within the compliance schedule provided in the TMDLs.

3. The implementation of measures set forth in this Order are reasonably expected to reduce the discharge of pollutants conveyed in storm water discharges into receiving waters, and to meet the TMDL WLAs for discharges from MS4s that have been adopted by the Regional Water Board.

4. The U.S. EPA has recommended that all future TMDLs and TMDL amendments be expressed as daily increments consistent with a federal court ruling (*Friends of the Earth, Inc. v. EPA, et al.* No. 05-5015 (D.C. Cir. 2006)). However, this interpretation does not affect the discretionary authority of the Regional Water Board to express NPDES permit limits and conditions in non daily terms because there is no express or implied statutory limitation (CWA §502(11)) (*Establishing*

TMDL "Daily Loads" in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in Friends of the Earth, Inc. v. EPA, et al. (April 2006) and Implications for NPDES Permits, U.S. EPA Office of Water, memorandum, Nov 15, 2006). This Order translates MS4 TMDL WLAs adopted by the Regional Water Board into forms "consistent with the assumptions and requirements of the TMDL".

5. During the term of the Order, the Permittees shall implement all necessary control measures to reduce pollutant(s) which cause or continue to cause or contribute to water quality impairments, but for which TMDLs have not yet been developed or approved, to eliminate the water quality impairment(s). Successful efforts to reverse the wet weather impairments during the permit term for such pollutants, may avoid the need for a WLA for wet weather or the need to develop a TMDL in the future.

6. This Order promotes land development and redevelopment strategies that consider water quality and water management benefits associated with smart growth techniques. Such measures may include hydromodification mitigation requirements, minimization of effective impervious area, integrated water resources planning, and low impact development guidelines. (Reference: *Protecting Water Resources with Smart Growth*, EPA 231-R- 04-002, U.S. EPA 2004; *Using Smart Growth Techniques as Storm Water Best Management Practices,* EPA 231-B-05-002, U.S. EPA 2005; *Parking Spaces/Community Places: Finding the Balance through Smart Growth Solutions*, EPA 231-K-06-001, U.S. EPA 2006; *Protecting Water Resources with Higher-Density Development*, EPA 231-R-06-001, U.S. EPA 2006.)

7. The implementation of an effective Public Information and Participation Program is a critical component of a storm water management program. While commercial and industrial facilities are traditionally subject to multiple environmental regulations and receive environmental protection guidance from multiple sources, the general public, in comparison, receives significantly less education in environmental protection. An effective Public Information and Participation Program is required because:
   (a) Activities conducted by the public such as vehicle maintenance, improper household waste materials disposal, improper pet waste disposal and the improper application of fertilizers and pesticides have the potential

to generate a significant amount of pollutants that could be discharged in storm water.

(b) An increase in public knowledge of storm water regulations, proper storage and disposal of household wastes, proper disposal of pet wastes and appropriate home vehicle maintenance practices can lead to a significant reduction of pollutants discharged in storm water.

8. This Order also provides flexibility for Permittees to seek authorization from the Regional Water Board Executive Officer to substitute a BMP under this Order with an alternative BMP, if they can provide information and documentation on the effectiveness of the alternative, equal to or greater than the prescribed BMP in meeting the objectives of this Order.

9. This Order contemplates that the Permittees are responsible for considering potential storm water impacts when making planning decisions in order to fulfill the Permittees' CWA requirement to reduce the discharge of pollutants in municipal storm water to the MEP and attain water quality objectives from new development and redevelopment activities. However, the Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittee's jurisdiction. This Order and its requirements are not intended to restrict or control local land use decision-making authority.

10. The State Water Board amended the Policy for the Implementation of Toxics Standards In Inland Surface Waters, Enclosed Bays and Estuaries of California (State Implementation Policy – SIP) on February 24, 2005. The SIP does not apply directly to the stormwater discharges. However, this Order includes a Monitoring Program that incorporates Minimum Levels (MLs) established under the State Implementation Policy. The MLs represent the lowest quantifiable concentration for priority toxic pollutants that is measurable with the use of proper method-based analytical procedures and factoring out matrix interference. The SIP's MLs therefore represent the best available science for determining MLs and are appropriate for a storm water monitoring program. The use of MLs allows the detection of toxic priority pollutants at concentrations of concern using recent advances in chemical analytical methods.

11. The International Storm Water Best Management Practices (BMP) Database was established in 1996 as a cooperative initiative between the U.S. EPA and the American Society of Civil Engineers (ASCE) to provide scientifically sound information to improve the design, selection and performance of storm water BMPs. The BMP database includes standardized BMP monitoring and reporting protocols, a storm water BMP database, BMP performance evaluation protocols, and BMP monitoring guidance. The storm water BMP database is updated approximately semi-annually to add new BMP studies and performance data. The International Storm Water Database is now maintained by the Water Environment Research Foundation (WERF).

12. This Order is not intended to prohibit the inspection for or abatement of vectors by the State Department of Public Health or local vector agencies in accordance with CA Health and Safety Code, § 116110 et seq. Certain Treatment Control BMPs if not properly designed, operated or maintained may create habitats for vectors (e.g. mosquitoes and rodents). This Order contemplates that the Permittees will closely cooperate and collaborate with local vector control agencies and the State Department of Public Health for the implementation, operation, and maintenance of Treatment Control BMPs in order to minimize the risk to public health from vector borne diseases.

13. This Order contemplates that Permittees will ensure that implemented Treatment Control BMPs will not pose a safety or health hazard to the public. This Order contemplates that Permittees will ensure that the maintenance of implemented Treatment Control BMPs will comply with all applicable health and safety regulations, such as, but not limited to requirements for worker entry into confined spaces under OSHA Safety and Training education, § 1926.21(b)(6)(i).

14. This Order incorporates presumptive BMPs to reduce pollutants in storm water discharges from construction sites to the MEP. The BMPs are identified in Table 6 (BMPs at Construction sites less than 1 acre), Table 7 (BMPs at Construction Sites 1 acre or greater but less than 5 acres), and Table 8 (BMPs at Construction sites 5 acres or greater). These BMPs include erosion control, sediment control, and construction site waste management practices. The BMPs listed in part 4.F of the Order were selected based on the Water Boards' experience of regulating such sites since 1992,

and are referenced in the *California Stormwater Quality Association (CASQA) Storm Water Best Management Practice Handbook Construction (January 2003)* and from the *Stormwater Quality Handbooks, Project Planning and Design Guide, Stormwater Pollution Prevention Plan (SWPPP) and Water Pollution Control Plan (WPCP) Preparation Manual, Construction Site Best Management Practices (BMPs) Reference Manual, March 2007* (Caltrans Document Number CTSW-RT-06-171.11-1) which serve as an industry standard for California. The BMPs identified in the Tables are technically feasible, practicable, and cost-effective. Where an identified BMP may be impracticable on a particular site, this Order includes a provision to select and implement an alternative BMP, through the BMP substitution provisions in subpart 4.A.2.

15. This Order incorporates presumptive BMPs to reduce pollutants in storm water discharges from commercial and industrial sites to the MEP. The BMPs are identified in Table 2 (BMPs at Restaurants), Table 3 (BMPs at Automotive Service Facilities), Table 4 (BMPs at Retail Gasoline Outlets), and Table 5 (BMPs at Nurseries). These BMPs include the implementation of good housekeeping practices designed to control pollutants at the source, promote the use of proper waste management practices, and implement control practices to keep pollutants away from any entrance to the storm drainage system. The BMPs listed in part 4.D of the Order were selected based on the Water Boards' experience of regulating such sites since 1992 and referenced in the California Stormwater Quality Association (CASQA) Storm Water Best Management Practice Handbook Commercial/Industrial Activity (January 2003) and from the Caltrans Storm Water Quality Handbook Maintenance Staff Guide May 2003 (Caltrans Document Number CTSW-RT-02-057), which serve as an industry standard for California. The BMPs identified in the Tables are technically feasible, practicable, and cost-effective. Where an identified BMP may be impracticable, this Order includes a provision to select and implement an alternative BMP, through the BMP substitution provisions in subpart 4.A.2.

16. This Order incorporates presumptive BMPs to reduce pollutants in storm water discharges from Public Agency Activities to the MEP. The BMPs are identified in Table 9 (BMPs at Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards). These BMPs include the implementation of good housekeeping practices designed to control pollutants

at the source, promote the use of proper waste management practices, implement control practices to keep pollutants away from any entrance to the storm drainage system and from being deposited or discharged directly into waters of the U.S. The BMPs listed in part 4.G of the Order were selected based on the Water Boards' experience of regulating such sites since 1990, and are referenced in the Caltrans Storm Water Quality Handbook Maintenance Staff Guide May 2003 (Caltrans Document Number CTSW-RT-02-057), which serves as a statewide standard for the California Department of Transportation (Caltrans). The BMPs identified in the Table are technically feasible, practicable, and cost-effective, and are the standard of practice for Caltrans sites statewide. Where an identified BMP may be impracticable, this Order includes a provision to select and implement an alternative BMP, through the BMP substitution provisions in subpart 5.A.2.

17. This Order incorporates BMPs to ensure that authorized Non-Storm Water Discharges are not a source of pollutants to the MS4, Table 1 (Required Conditions for Non-Storm Water Discharges). The BMPs included are for the purpose of dechlorination and/or for prevention of erosion and sediment loss, or to reduce other harmful pollutants during the discharge of authorized non-storm water discharges to the MS4. The BMPs listed in part 1.B of the Order were selected from the *American Water Works Association AWWA Guidelines For The Development Of Your Best Management Practices (BMP) Manual For Drinking Water System Releases Developed by the CA-NV AWWA Environmental Compliance Committee (2005)* which serves as an industry standard for California, from the results of studies directed by the Los Angeles Water Board, - *Evaluation of Non-Storm Water Discharges to California Storm Drains and Potential Policies for Effective Prohibition Methods, Final Report*, University of California, Los Angeles, Contract No. 5-104-140-0 (1997), and *Water Quality Concerns and Regulatory Controls for Non Storm Water Discharges to Storm Drains*, Duke L.D. and M. Kihara, Journal of the American Water Resources Association, Vol. 34: 661-676, (1998), and from the Water Boards' experience of controlling authorized non-storm discharges to the MS4 since 1990. The BMPs identified in the Table are technically feasible, practicable, and cost-effective. Where an identified BMP may be impracticable, this Order includes a provision to select and implement an alternative BMP, through the BMP substitution provisions in subpart 5.A.2.

18. In accordance with Federal regulations at 40 CFR 124.8, a Fact Sheet has been prepared to explain the principal facts and the significant factual, legal, methodological, policy, and economic matters considered in preparing the Order. This Fact Sheet has been made a part of the Administrative Record.

19. The State Water Board adopted statewide General Waste Discharge Requirements for Sanitary Sewer Systems, (WQ Order No. 2006-0003) on May 2, 2006, to provide a consistent, statewide regulatory framework to address sanitary sewer overflows ("SSO Orders"). The SSO Order establishes requirements for public agencies that own or operate sanitary sewer systems to develop and implement sewer system management plans and to report SSOs. SSOs that enter MS4s have the potential to impair the recreational use of receiving waters, and to harm public health. This Order establishes coordination, response, and notification requirements for MS4 Permittees when SSOs result in a discharge to the MS4 system.

20. This Order takes into consideration the housing needs in the area under the Permittees' jurisdiction by balancing the implementation of Smart Growth and Low Impact Development techniques with the protection of the water resources of the region. Although not required, the Regional Water Board considered the need for housing and the appropriate techniques to allow for reasonable development while protecting the receiving waters from degradation.

21. This Order may have an effect on costs required for compliance with the provisions contained herein. Although not required, the Regional Water Board has considered costs in preparing this Order. Though also not required, the Regional Water Board has also considered the factors set forth in Water Code section 13241.

G. Public Notification

1. The issuance of waste discharge requirements pursuant to California Water Code section 13370 et seq. is exempt from the California Environmental Quality Act in accordance with California Water Code section 13389. *County of Los Angeles et al., v. California Water Boards et al.*, (2006), 143 Cal.App.4th 985.

2. The Regional Water Board has notified the Permittees, and interested agencies and persons of its intent to issue waste

discharge requirements for this discharge, and has provided them with an opportunity to make statements and submit their comments.

3. The Regional Water Board staff has conducted more than 35 meetings from February 9, 2007 through December 19, 2008, with Permittees, their representatives (Larry Walker and Associates, and Somach, Simmons & Dunn), and various stakeholders (Building Industry Association of Southern California/ Greater Los Angeles Ventura Chapter (BIAGLA/ VC), California State Dept. of Health Services, Calleguas Water District, California Stormwater Quality Association (CASQA), City of Downey, City of Los Angeles-EMD, Collation for Practical Regulation (CPR), Construction Industry Coalition on Water Quality (CICWQ), County of Orange, Geosyntec Consultants, Golden State, Heal The Bay; Local Government commission, Los Angeles City; Los Angeles County Department of Public Works, Los Angeles County-SD, Los Angeles Department of Water & Power, Metropolitan Water District, Natural Resources Defense Council (NRDC), Richard Watson Association, San Bernardino Flood Control District, Santa Monica Bay Restoration Commission, Southern California Coastal Water Research Project, University of California Sea Grant, Ventura CoastKeeper). On April 5, 2007 and September 20, 2007 the Regional Water Board conducted workshops to discuss drafts of the NPDES Order and received input from the Permittees and the public regarding proposed changes.

4. This Order shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect 90 days from Order adoption date provided the Regional Administrator of the U.S. EPA has no objections.

5. Pursuant to Cal. Water Code § 13320, any aggrieved party may seek review of this Order by filing a petition with the State Board within 30 days of the date of adoption of the Order by the Regional Water Board. A petition must be sent to:

   State Water Resources Control Board
   Office of the Chief Counsel
   P.O. Box 100
   Sacramento, CA 95812-0100

6. This Order may be modified or alternatively revoked or reissued prior to its expiration date or any administrative

extension thereto, in accordance with 40 CFR122.41(f) and 122.62.

IT IS HEREBY ORDERED that the Permittees, in order to meet the provisions contained in Division 7 of the Cal. Water Code and regulations adopted thereunder, and the provisions of the CWA and regulations adopted thereunder, shall comply with the following:

PART 1 - DISCHARGE PROHIBITIONS

A. Prohibitions - Non-Storm Water Discharges

1. The Permittees shall, within their respective jurisdictions, effectively prohibit non-storm discharges into the MS4 and receiving waters, except where such discharges:
   (a) Originate from a State, Federal, or other source for which they are pre-empted from regulating by State or Federal law; or
   (b) Are covered by a separate individual or general NPDES permit, or conditional waiver for irrigated lands; or
   (c) Flows from fire fighting activities.
   (d) Fall within one of the categories below, are not a source of pollutants that exceed water quality standards, and meet all conditions where specified by the Regional Water Board Executive Officer:
      (1) Category A – Natural flows
         (A) Stream diversions authorized by the State Water Board
         (B) Natural springs and rising ground water
         (C) Uncontaminated ground water infiltration [as defined by 40 CFR35.2005(20)][1]
         (D) Flows from riparian habitats or wetlands
      (2) Category B – Flows incidental to urban activities, providing conditions listed in table below:
         (A) Discharges from potable water sources[2]
         (B) Gravity flow from foundation, footing and crawl space drains.

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[1] NPDES permit for ground water dewatering is required within the Los Angeles Region including Ventura County.

[2] The term applies to low volume, incidental and infrequent releases that are innocuous from a water quality perspective. Those releases for dewatering or hydro-testing or flushing of water supply and distribution mains and incidental and infrequent releases from well heads shall be allowed with the implementation of appropriate BMPs until such time as a new General Permit is adopted that addresses those types of releases. Discharges from hydrostatic pipe testing shall be subject to separate NPDES general permit coverage (CAG674001) and discharges from utility vaults shall be conducted under coverage of a separate NPDES permit specific to that activity.

(C) Air conditioning condensate
(D) Reclaimed and potable landscape irrigation runoff
(E) Dechlorinated/ debrominated swimming pool discharges [see def. part 7]
(F) Non-commercial car washing by residents or non-profit organizations
(G) Sidewalk rinsing
(H) Pooled non-storm water from treatment BMPs[3]

Table 1 – Required Conditions for Non-Storm Water Discharges

Type of Discharges:	**Conditions under which allowed:**	**Required conditions for discharge to occur:**
Stream diversions permitted by the State Board;	Authorization by the State Water Board	Permittees shall comply with all conditions in the authorization.
Natural springs and rising ground water	1. Ground water dewatering requires a separate NPDES permit. 2. Segregate flow to prevent introduction of pollutants.	Permittees shall comply with all conditions in the authorization.
Uncontaminated ground water infiltration [as defined by 40 CFR 35.2005(20)] (Utility vault dewatering requires a separate NPDES permit.)	NPDES permit for ground water dewatering is required within the Los Angeles Region including Ventura County	Permittees shall comply with all conditions in the authorization.
Flows from riparian habitats or wetlands	Provided that all necessary permits or authorizations are received prior to diverting the stream flow.	Permittees shall comply with all conditions in the authorization.
Discharges from potable water sources[4]	See Footnote #1. Provided discharges from water lines and potable water sources shall be dechlorinated, pH adjusted if necessary, reoxygenated, and volumetrically and velocity controlled to prevent resuspension of sediments.	See Footnote #2. To be discharged, this type of water shall be dechlorinated using aeration and/ or sodium thiosulfate and/ or other appropriate means and/or be allowed to infiltrate to the ground. BMPs such as sand bags or gravel bags, or other appropriate means shall be utilized to prevent sediment transport. All sediments shall be

[2] All storm water BMPs shall at a minimum be maintained at a frequency as specified by the manufacturer, and designed to drain within 72 hours of the end of a rain. Storm water treatment BMPs may be drained to the MS4 under this Order if the discharge is not a source of pollutants. Sediments shall be disposed of properly, in compliance with all applicable local, state, and federal policies, acts, laws, regulations, ordinances, and statutes.

Type of Discharges:	Conditions under which allowed:	Required conditions for discharge to occur:
		collected and disposed of in a legal and appropriate manner.
Drains for foundation, footing and crawl drains	Dewatering requires a separate NPDES permit.	Permittees shall comply with all conditions in the authorization.
Air conditioning condensate	Segregation of flow to prevent introduction of pollutants. Percolation whenever possible.	Permittees shall comply with all conditions in the authorization.
Water from crawl space pumps	Dewatering requires a separate NPDES permit within the Los Angeles Region including Ventura County	Permittees shall comply with all conditions in the authorization.
Reclaimed and potable landscape irrigation runoff	Segregation of flow to prevent introduction of pollutants.	Implement conservation programs to minimize this type of discharge by using less water.
Dechlorinated/ debrominated swimming pool discharges [see definition Part 8]	Where the discharge is not excepted by the sanitary sewer operator. Swimming pool discharges are to be dechlorinated, pH adjusted if necessary, aerated to remove chlorine if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments. Cleaning waste water and filter back wash shall not be discharged to municipal separate storm sewers. No discharges are allowed containing salts in excess of Water Quality Standards. Chlorine residual in discharge shall not exceed 0.1mg/L.	Pool water may be dechlorinated using time, aeration, and/ or sodium thiosulfate.
Non-commercial car washing by residents or non-profit organizations	Preferably at a commercial carwash or designated area where wash water can percolate. Pumps or vacuums may be used to direct water to pervious areas.	Permittees shall comply with all conditions in the authorization.
Sidewalk rinsing	This may be undertaken only if high pressure low volume is used as described in the glossary under "Sidewalk Rinsing".	
Pooled storm water from treatment BMPs[5]	All storm water BMPs shall at a minimum be maintained at a frequency as specified by the manufacturer. All storm water BMPs shall be	

[5] All storm water BMPs shall at a minimum be maintained at a frequency as specified by the manufacturer, and designed to drain within 72 hours of the end of a rain. Storm water treatment BMPs may be drained to the MS4 under this Order if the discharge is

Type of Discharges:	Conditions under which allowed:	Required conditions for discharge to occur:
	designed to drain within 72 hours of the end of the rain event to avoid the breeding of vectors. Storm water treatment BMPs may be drained to the MS4 under this Order if the discharge is not a source of pollutants. The discharge shall cease before the discharge has become a source of a pollutant(s), (bottom sediment included). Sediments shall be disposed of properly, in compliance with all applicable local, state, and federal policies, acts, laws, regulations, ordinances, and statutes.	

2. If the Regional Water Board Executive Officer determines that any of the preceding categories of non-storm water discharges are a source of pollutants that exceed water quality standards, the Permittee(s) shall either:
   (a) Prohibit the discharge from entering the MS4; or
   (b) Authorize the discharge category and require implementation of appropriate or additional BMPs to ensure that the discharge will not be a source of pollutants; or
   (c) Require or obtain coverage under a separate RWQCB or SWRCB permit for discharge into the MS4.

PART 2 – RECEIVING WATER LIMITATIONS

1. Discharges from the MS4 that cause or contribute to a violation of water quality standards are prohibited.

2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance.

3. The Permittee shall comply with Receiving Water Limitations 1 and 2 through timely implementation of control measures and other actions to reduce pollutants in the storm water discharges in accordance with the requirements of this Order including any modifications. The Permittees' Program shall be designed to achieve compliance with Receiving Water Limitations 1 and 2. If exceedance(s) of water quality

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not a source of pollutants. Sediments shall be disposed of properly, in compliance with all applicable local, state, and federal policies, acts, laws, regulations, ordinances, and statutes.

objectives or water quality standards (collectively WQS) persist, notwithstanding implementation of this permit, the Permittees shall ensure compliance with Receiving Water Limitations 1 and 2 by complying with the following procedure:

(a) Upon determination by either the Permittees or the Regional Water Board that discharges are causing or contributing to an exceedance of an applicable WQS, the Permittee(s) upstream of the point of discharge shall promptly notify and thereafter submit a report to the Regional Water Board Executive Officer that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of WQSs. The report may be included with the Annual Report, unless the Regional Water Board Executive Officer directs an earlier submittal. The Regional Water Board Executive Officer may require modifications to the report.

(b) Submit any modifications to the report required by the Regional Water Board Executive Officer within 30 days of notification.

(c) Within 30 days following approval of the Report described above by the Regional Water Board Executive Officer, the Permittees shall revise their Program and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required.

(d) Implement the revised Program and monitoring program according to the approved schedule.

4. Permittees shall annually report the effectiveness of BMPs in reducing exceedances of receiving water limitations. The Regional Board Executive Officer may direct implementation of additional BMPs if there are continuing or recurring exceedances of the same receiving water limitation.

PART 3 - STORM WATER QUALITY MANAGEMENT PROGRAM IMPLEMENTATION

A. General Requirements

1. Each Permittee shall, at a minimum, adopt and implement applicable terms of this Order within its jurisdictional boundary. The Principal Permittee shall be responsible for

program coordination as described in this Order as well as compliance with applicable portions of the permit within its jurisdiction. This Order shall be implemented no later than August 5, 2009, unless a later date has been specified for a particular provision in this Order and provided the Regional Administrator of the U.S. EPA has no objections.

2. Each Permittee shall comply with the requirements of 40 CFR122.26(d)(2) and implement programs and control measures so as to reduce the discharges of pollutants in storm water to the MEP and achieve water quality standards.

3. Each Permittee shall require that treatment control BMPs being implemented under the provisions of this Order shall be designed, at a minimum, to achieve the BMP performance criteria for storm water pollutants likely to be discharged as identified in Attachment "C", Table 3 for an 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area using a 48 to 72-hour draw down time, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998). Expected BMP pollutant removal performance for effluent quality was developed from the WERF-ASCE/ U.S. EPA International BMP Database. Permittees shall select Treatment BMPs based on the primary class of pollutants likely to be discharged from the site/facility (e.g. metals from an auto repair shop). Permittees may develop guidance for appropriate Treatment BMPs for project type based on Attachment "C". For the treatment of pollutants causing impairments within the drainage of the impaired waterbody, permittees shall select BMPs from the top three performing BMP categories or alternative BMPs that are designed to meet or exceed the performance of the highest performing BMP for the pollutant causing impairment.

4. Each Permittee shall implement programs and measures to comply with the TMDLs' WLAs for the MS4 as specified in Part 6.

5. If TMDL requirements, including Implementation Plans and Reports, address substantially similar requirements as the MS4 permit, the Executive Officer may approve the applicable reports, plans, data or submittals under the applicable TMDL as fulfilling requirements under the MS4.

B. Legal Authority

1. Permittees shall possess the necessary legal authority to prohibit, including, but not limited to:
   (a) Illicit connections and illicit discharges, and to remove illicit connections.
   (b) The discharge of non-storm water to the MS4 from:
      (1) Washing or cleaning of gas stations, auto repair garages, or other types of automotive service facilities
      (2) Mobile auto washing, carpet cleaning, steam cleaning, sandblasting and other such mobile commercial and industrial operations
      (3) Areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken
      (4) Storage areas for materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials
      (5) Swimming pools[6] that have a concentration greater than:
         (A) Chlorine/ bromine- 0.1mg/L
         (B) Chloride- 250mg/L
      (6) Swimming pool filter backwash
      (7) Decorative fountains and ponds
      (8) Industrial/ Commercial areas, including restaurant mats
      (9) Concrete truck cement, pumps, tools, and equipment washout
      (10) Spills, dumping, or disposal of materials other, such as:
         (A) Litter, landscape and construction debris, garbage, food, animal waste, fuel or chemical wastes, batteries, and any other materials which have the potential to adversely impact water quality; and
         (B) Any pesticide, fungicide or herbicide
      (11) Stationary and mobile pet grooming facilities
      (12) Trash container leachate

2. The Permittees shall possess adequate legal authority to:
   (a) Control through interagency agreement, the contribution of pollutants from one portion of the MS4 to another portion of the MS4.

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[6] MS4s discharging directly to the ocean are not subject to this prohibition.

(b) Require persons within their jurisdiction to comply with conditions in the Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows).
(c) Utilize enforcement measures (e.g., stop work orders, notice of violations, fines, referral to City, County, and/ or District Attorneys, referral to strikeforces, etc.) by ordinances, permits, contracts, orders, administrative authority, and civil and criminal prosecution.[7]
(d) Control pollutants, including potential contribution[8] in discharges of storm water runoff associated with industrial activities, including construction activities to its MS4, and control the quality of storm water runoff from industrial sites, including construction sites.
(e) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the MS4.
(f) Require the use of control measures to prevent or reduce the discharge of pollutants to achieve water quality objectives.
(g) Require that Treatment Control BMPs be properly operated and maintained.

3. Each Permittee has adopted a Storm Water Quality Ordinance based upon a countywide model. Each Permittee shall ensure, no later than May 7, 2011, that its Storm Water Quality Ordinance authorizes the Permittee to enforce all requirements of this Order.

4. Each Permittee shall submit no later than two years after Order adoption date, a statement by its legal counsel that the Permittee has obtained and possesses all necessary legal authority to comply with this Order through adoption of ordinances and/ or municipal code modifications.

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[7] In the case of private responsible parties such as, HOAs, the Permittee must retain enforcement authority.
[8] "Potential contributions" and "potential to discharge," means adequate legal authority to prevent an actual discharge of pollutants to the municipal separate storm sewer system.

C. Fiscal Resources

1. The Permittees shall implement the activities required to comply with the provisions of this Order.[9] Each Permittee shall:
   (a) Submit an Annual Budget Summary that shall include:
      (1) Budgets for the upcoming report year (estimated expenditure) for the following specific categories (estimated percentages and written explanations where necessary):
         (A) Program Management Activities.
            (i) Overall Administrative costs
         (B) Program Implementation Activities (permit related activities only). Provide figures breakdown of expenditures for the categories below:
            (i) Illicit connection/ illicit discharge program.
            (ii) Development planning and approval
            (iii) Construction program including inspection activities
            (iv) Industrial/ Commercial program including inspection activities
            (v) Public Agency Activities
               (I) Maintenance and inspection of Treatment Control BMPs
               (II) Municipal Street Sweeping
               (III) Municipal Drainage Maintenance including catch basin clean-outs
               (IV) Other costs associated with storm water management (describe)
            (vi) Public Information and Participation.
            (vii) Monitoring Program
            (viii) Miscellaneous Expenditures (describe)

D. Modifications/ Revisions

1. No later than two years after the Order adoption date, each Permittee shall modify its storm water management programs, protocols, practices, and municipal codes to make them consistent with the requirements herein.

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[9] The sources of funding may be the general funds, and/or Benefit Assessment, plan review fees, permit fees, industrial/ commercial user fee, revenue bonds, grants or other similar funding mechanism.

E. Designation and Responsibilities of the Principal Permittee

1. The Ventura County Watershed Protection District is hereby designated as the Principal Permittee. The Principal Permittee shall:
   (a) Participate in the County Environmental Crimes Task Force
   (b) Coordinate and facilitate activities necessary to comply with the requirements of this Order, but the Principal Permittee is not responsible for ensuring compliance of any other individual Permittee
   (c) Coordinate permit activities among Permittees and act as liaison between the Permittees and the Regional Water Board on permitting issues
   (d) Provide technical and administrative support for committees that will be organized to implement this Order and its requirements
   (e) Evaluate, assess, and synthesize the results of the monitoring program and the effectiveness of the implementation of BMPs
   (f) Convene the Committee Meetings constituted pursuant to subpart 4.F.1., below, upon designation of representatives
   (g) Implement the Countywide Monitoring Program required under the Order and evaluate, assess and synthesize the results of the monitoring program
   (h) Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Water Board of monitoring and annual reports, and summaries of other reports required under this Order

F. Responsibilities of the Permittees

1. Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings- Permit Coverage D.1 and D.2). Permittees are not responsible for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall:
   (a) Comply with the requirements of this Order and any modifications thereto
   (b) Coordinate among its internal departments and agencies, as necessary, to facilitate the implementation of the requirements of this Order applicable to such Permittees in an efficient and cost-effective manner
   (c) Participate in intra-agency coordination (e.g., Planning Department, Fire Department, Building and Safety, Code Enforcement, Public Health, Parks and Recreation, and

others) necessary to successfully implement the provisions of this Order
(d) Report, in addition to the Budget Summary, any supplemental dedicated budgets for the same categories
(e) Participate in Committee Meetings, as necessary

PART 4 - SPECIAL PROVISIONS (BASELINE)

A. General Requirements

1. This Order and the provisions herein are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP and not cause or contribute to exceedances of water quality standards for the permitted areas in the County of Ventura.

2. Best Management Practice Substitution
   (a) The Regional Water Board Executive Officer may approve any site-specific BMP substitution upon written request by a Permittee(s) and after public notice, if the Permittee can document that:
      (1) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants.
      (2) The fiscal burden of the original BMP or program is greater than the proposed alternative and does not achieve a greater improvement in storm water quality.
      (3) The proposed alternative BMP or program will be implemented within a similar period of time.
      (4) BMP substitution will be in accordance with the public review provisions of the Order (Part 8C.1 and Part 8C.2).

B. Watershed Initiative Participation

1. The Principal Permittee shall participate in water quality meetings for watershed management and planning, including but not limited to the following:
   (a) Southern California Stormwater Monitoring Coalition (SMC)
   (b) Other Watershed planning groups as appropriate

2. The Principal Permittee shall participate in the following regional water quality programs, and projects for watershed management and planning:
   (a) SMC Regional Monitoring Programs
      (1) Southern California Regional Bioassessment
         (A) Level of effort per watershed
            (i) Probabilistic sites per watershed
               (I) Ventura River - Six
               (II) Santa Clara River - Three
               (III) Calleguas Creek - Six
            (ii) Integrator sites per watershed
               (I) Ventura River - One
               (II) Santa Clara River - One
               (III) Calleguas Creek – One
            (iii) Fixed bioassessment sites
               (I) The Permittees shall perform bioassessment at one fixed urban site in each major watershed. Site selection shall be determined by the results of the first year SMC results, as approved by the Executive Officer.
   (b) Southern California Bight Projects
      (1) Regional Monitoring Survey – 2008, and successive years.

C. Public Information and Participation Program (PIPP)

1. The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this part. The Principal Permittee shall coordinate with Permittees to implement specific PIPP requirements. The objectives of the PIPP are as follows:

   (a) To increase the knowledge of the target audience about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts

   (b) To change the waste disposal and storm water pollution generation behavior of target audiences by encouraging implementation of appropriate solutions

   (c) To involve and engage communities in Ventura County to participate in mitigating the impacts of storm water pollution

2. Residential Program
   (a) "No Dumping" Message

Each Permittee shall label all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping shall be posted at designated public access points to creeks, other relevant waterbodies, and channels. Signage and storm drain messages shall be legible and maintained.

(b) Public Reporting

Each Permittee shall identify staff who will serve as the contact person(s) for reporting clogged catch basin inlets and illicit discharges/dumping, faded or missing catch basin labels, and general storm water management information. Permittees shall include this information, updated by July 1 of each year, in public information media such as the government pages of the telephone book, and internet web sites. The Principal Permittee shall compile a list of the general public reporting contacts submitted by all Permittees and make this information available on the web site (http://www.vcstormwater.org/contact.htm) and upon request. Each Permittee is responsible for providing current, updated information to the Principal Permittee.

(c) Outreach and Education

(1) Collaboratively, the Permittees shall implement the following activities:

(A) Conduct a Storm Water pollution prevention advertising campaign.

(B) Conduct Storm Water pollution prevention public service announcements.

(C) Distribute storm water pollution prevention public education materials within 365 days to:

(i) Automotive parts stores

(ii) Home improvement centers/ lumber yards/ hardware stores

(iii) Pet shops/ feed stores

(D) Public education materials shall include, but are not limited to information on the proper disposal, storage, and use of:

(i) Vehicle waste fluids

(ii) Household waste materials

(iii) Construction waste materials

(iv) Pesticides and fertilizers (including integrated pest management practices-IPM)

(v) Green waste (including lawn clippings and leaves)

(vi) Animal wastes

(E) Work with existing local watershed groups or organize watershed Citizen Advisory Groups/ Committees to develop effective methods to educate the public about storm water pollution no later than May 7, 2010.

(F) Organize events targeted to residents and population subgroups; and

(G) Maintain the Countywide storm water website (www.vcstormwater.org), which shall include educational material listed in the preceding subpart C.1(c)(1)(C).

(2) The Principal Permittee shall develop a strategy to educate ethnic communities through culturally effective methods. Details of this strategy should be incorporated into the PIPP, and implemented, no later than May 7, 2010.

(3) Each Permittee shall continue the existing outreach program to residents on the proper disposal of litter, green waste, pet waste, proper vehicle maintenance, lawn care and water conservation practices.

(4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events.

(5) The Permittees shall make a minimum of 5 million impressions per year to the general public related to storm water quality, with a minimum of 2.5 million impressions via newspaper, local TV access, local radio and/ or internet access.

(6) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution. Alternatively, a Permittee may submit a plan to the Regional Water Board Executive Officer for consideration no later than (90 days after adoption of the Order), to provide outreach in lieu of the school curriculum. Pursuant to Water Code section 13383.6, the Permittees, in lieu of providing educational materials/ funding to School Districts in the County, may opt to provide an equivalent amount of funds or fraction thereof to the Environmental Education Account established within the State Treasury.

(7) Each Permittee shall provide the contact information for their appropriate staff responsible for storm water

public education activities to the Principal Permittee and contact information changes no later than 30 days after a change occurs.

(8) The Permittees shall develop and implement a behavioral change assessment strategy no later than May 7, 2010, in order to determine whether the PIPP is demonstrably effective in changing the behavior of the public. The strategy shall be developed based on current sociological data and studies.

(d) Pollutant-Specific Outreach

The Principal Permittee, in cooperation with the Permittees, shall coordinate to develop outreach programs that focus on metals, urban pesticides, bacteria and nutrients as the pollutants of concern no later than May 7, 2010. Metals may be appropriately addressed through the Industrial/ Commercial Facilities Program (e.g. the distribution of educational materials on appropriate BMPs for metal fabrication and recycling facilities that have been identified as a potential source). Region-wide pollutants may be included in the Principal Permittee's mass media outreach program.

3. Businesses Program

(a) Corporate Outreach

(1) The Permittees shall work with other regional or statewide agencies and, associations such as the California Storm Water Quality Association (CASQA), to develop and implement a Corporate Outreach program to educate and inform corporate franchise operators and/or local facility managers about storm water regulations and BMPs. Once developed, the program shall target a minimum of four Retail Gasoline Outlets (RGO) franchisers and cover a minimum of 80% of RGO franchisees in the county, four retail automotive parts franchisers, two home improvement center franchisers and six restaurant franchisers. Corporate outreach for all target facilities shall be conducted not less than twice during the term of this Order, with the first outreach contact to begin no later than two years after Order adoption date. At a minimum, this program shall include:

(A) Confer with franchise operators and/or local facility managers to explain storm water regulations.

(B) Distribution and discussion of educational material regarding storm water pollution and

BMPs, and provide managers with recommendations to facilitate employee and facility compliance with storm water regulations.

(b) Business Assistance Program

(1) The Permittees shall implement a Business Assistance Program to provide technical information to small businesses to facilitate their efforts to reduce the discharge of pollutants in storm water. The Program shall include:

(A) On-site, telephone or e-mail consultation regarding the responsibilities of businesses to reduce the discharge of pollutants, procedural requirements, and available guidance documents.

(B) Distribution of storm water pollution prevention education materials to operators of auto repair shops, car wash facilities (including mobile car detailing), mobile carpet cleaning services, commercial pesticide applicator services and restaurants.

D. Industrial/ Commercial Facilities Program

I. Each Permittee shall require implementation of pollutant reduction and control measures, unless precluded by local ordinances, at industrial and commercial facilities, with the objective of reducing pollutants in storm water. Except where specified otherwise in this Order, pollutant reduction and control measures may be used alone or in combination, and may include Treatment Control, Source Control BMPs, and operation and maintenance procedures, which may be applied before, during, and/ or after pollutant generating activities. At a minimum, the Industrial/ Commercial Facilities Control Program shall include requirements to:

(a) Track

(b) Inspect

(c) Ensure compliance with municipal ordinances at industrial and commercial facilities that are critical sources of pollutants in storm water

1. Inventory of Critical Sources

(a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical Sources to be tracked are summarized below, and specified in Attachment "D":

(1) Commercial Facilities
  (A) Restaurants
  (B) Automotive service facilities
  (C) RGOs and automotive dealerships
  (D) Nurseries and nursery centers
(2) U.S. EPA Phase I, II Facilities
(3) Other Federally-mandated Facilities [as specified in 40 CFR122.26(d)(2)(iv)(C)]
  (A) Municipal landfills
  (B) Hazardous waste treatment, disposal, and recovery facilities
  (C) Facilities subject to SARA Title III (also known as the Emergency Planning and Community Right-to-Know Act (EPCRA))

(b) Each Permittee shall include the following minimum fields of information for each critical source industrial and commercial facility
  (1) Name of facility and name of owner/ operator.
  (2) Address of facility
  (3) Coverage under the IASGP or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Board pertaining to runoff discharges.
  (4) A narrative description including Standard Industrial Classification (SIC) System/ North American Industry Classification System (NAICS) codes that best describe the industrial activities performed and principal products used at each facility and status of exposure to storm water.

(c) The Regional Water Board recommends that Permittees include additional fields of information, such as material usage and/ or industrial output, and discrepancies between SIC System/ NAICS Code designations (as reported by facility operators) and identify the actual type of industrial activity that has the potential to pollute storm water. In addition, the Regional Water Board recommends the use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system.

(d) Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available inter and intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits, and similar information).

2. Inspect Critical Sources

(a) Commercial Facilities

Permittee shall inspect all facilities identified in subpart 5.D.1. twice during the 5-year term of the Order, provided that the first inspection occurs no later than May 7, 2010. A minimum interval of 6 months between the first and the second mandatory compliance inspection is required. In addition, each Permittee shall implement the activities outlined in the following subparts. At each facility, inspectors shall verify that the operator is implementing the source control BMPs. The Permittees may require implementation of additional BMPs where storm water flows from the MS4 discharge to an environmentally sensitive area (ESA, see part 7 for definition) or a CWA § 303(d) listed waterbody (see subpart 3(b) below).

(1) Restaurants-
Level of inspections: Each Permittee shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively implemented in compliance with State law, County and municipal ordinances. BMPs in Table 2 (BMPs at Restaurants) shall be implemented, unless the pollutant generating activity does not occur.

Table 2 - BMPs at Restaurants

Pollutant-Generating Activity	**BMP Narrative Description**	**2003 California Stormwater BMP Handbook Industrial and Commercial BMP Identification #**
Waste/ Hazardous Materials Storage, Handling and Disposal	Implementation of effective storage, handling and disposal procedures for hazardous materials.	By Municipality
Unauthorized Non-Storm Water Discharges	Effective elimination of non-storm water discharges.	SC-10
Accidental Spills/ Leaks	Implementation of effective spills/ leaks prevention and response procedures.	SC-11
Outdoor Storage of Raw Materials	Implementation of effective source control practices and structural devices.	SC-33
Storage and Handling of Solid Waste	Implementation of effective solid waste storage/ handling practices and appropriate control measures	SC-34
Parking/ Storage Area Maintenance	Implementation of effective parking/ storage area designs and housekeeping/ maintenance practices	SC-43
Storm Water Conveyance System Maintenance	Implementation of proper conveyance system operation and maintenance protocols.	SC-44

(2) Automotive Service Facilities-

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each facility within its jurisdiction, in compliance with County and municipal ordinances. The inspections shall verify that BMPs in Table 3 (BMPs at Automotive Service Facilities) are being implemented, unless the pollutant generating activity does not occur.

Table 3 - BMPs at Automotive Service Facilities

Pollutant-Generating Activity	**BMP Narrative Description**	**2003 California Stormwater BMP Handbook Industrial and Commercial BMP Identification #**
Unauthorized Non-Storm Water Discharges	Effective elimination of non-storm water discharges.	SC-10
Accidental Spills/ Leaks	Implementation of effective spills/ leaks prevention and response procedures.	SC-11
Vehicle/ Equipment Fueling.	Implementation of effective fueling source control devices and practices.	SC-20
Vehicle/ Equipment Cleaning.	Implementation of effective equipment/ vehicle cleaning practices and appropriate wash water management practices	SC-21
Vehicle/ Equipment Repair	Implementation of effective vehicle/ equipment repair practices and source control devices.	SC-22
Outdoor Liquid Storage	Implementation of effective outdoor liquid storage source controls and practices.	SC-31
Outdoor Storage of Raw Materials	Implementation of effective source control practices and structural devices.	SC-33
Storage and Handling of Solid Waste	Implementation of effective solid waste storage/ handling practices and appropriate control measures	SC-34
Parking/ Storage Area Maintenance	Implementation of effective parking/ storage area designs and housekeeping/ maintenance practices	SC-43
Storm Water Conveyance System Maintenance Practices	Implementation of proper conveyance system operation and maintenance protocols.	SC-44

(3) Retail Gasoline Outlets and Automotive Dealerships-
Level of Inspections: Each Permittee shall confirm that BMPs are being effectively implemented at each facility within its jurisdiction, in compliance with County and municipal ordinances. The inspections shall verify that BMPs in Table 4 (BMPs at Retail Gasoline Outlets) are being implemented, unless the pollutant generating activity does not occur.

Table 4 - BMPs at Retail Gasoline Outlets

Pollutant-Generating Activity	**BMP Narrative Description**	**2003 California Stormwater BMP Handbook Industrial and Commercial BMP Identification #**
Unauthorized Non-Storm Water Discharges	Effective elimination of non-storm water discharges.	SC-10
Accidental Spills/ Leaks	Implementation of effective spills/ leaks prevention and response procedures.	SC-11
Vehicle/ Equipment Fueling	Implementation of effective fueling source control devices and practices.	SC-20
Vehicle/ Equipment Cleaning	Implementation of effective wash water control devices.	SC-21
Outdoor Storage of Raw Materials	Implementation of effective source control practices and structural devices.	SC-33
Storage and Handling of Solid Waste	Implementation of effective solid waste storage/ handling practices and appropriate control measures	SC-34
Building and Grounds Maintenance	Implementation of effective facility maintenance practices.	SC-41
Parking/ Storage Area Maintenance	Implementation of effective parking/ storage area designs and housekeeping/ maintenance practices	SC-43

(4) Commercial Nurseries and Nursery Centers (Merchant Wholesalers, Nondurable Goods, and Retail Trade)-

Level of Inspection: Each Permittee shall confirm that BMPs are being effectively implemented at each facility within its jurisdiction, in compliance with County and municipal ordinances. The inspections shall verify that BMPs in Table 5 (BMPs at Nurseries) are being implemented, unless the pollutant generating activity does not occur.

Table 5 - BMPs at Nurseries

Pollutant-Generating Activity	**BMP Narrative Description**	**2003 California Stormwater BMP Handbook Industrial and Commercial BMP Identification #**
Unauthorized Non-Storm Water Discharges	Effective elimination of non-storm water discharges.	SC-10
Outdoor Loading/ Unloading	Implementation of effective outdoor loading/ unloading practices.	SC-30
Outdoor Liquid Storage	Implementation of effective outdoor liquid storage source controls and practices.	SC-31
Outdoor Equipment Operations	Implementation of effective outdoor equipment source control devices and practices.	SC-32
Outdoor Storage of Raw Materials	Implementation of effective source control practices and structural devices.	SC-33
Building and Grounds Maintenance	Implementation of effective facility maintenance practices.	SC-41

(b) Industrial Facilities

Each Permittee shall conduct compliance inspections as specified below.

(1) **Frequency of Inspection**

(A) Each Permittee shall perform an initial inspection at all industrial facilities identified by the U.S. EPA in 40 CFR122.26(c) no later than 2 years after Order adoption date. After the initial inspection, all facilities determined as having exposure of industrial activities to storm water are subject to a second mandatory compliance inspection. A minimum interval of 6 months between the first and the second compliance inspection is required.

(B) Following the first mandatory compliance inspection, a Permittee shall perform a second mandatory compliance inspection yearly at a minimum of 20% of the facilities determined not to have exposure of industrial activities to storm water. The purpose of this inspection is to verify the continuity of the no exposure status. Facilities determined as having exposure will be notified that they must obtain coverage under the IASGP. A facility need not be inspected more than twice during the term of the Order unless subject to an enforcement action. A minimum interval of 6 months in between the first and the second compliance inspection is required.

(C) Applicable to all facilities: A Permittee need not inspect facilities that have been inspected by the Regional Water Board within the previous 24 month interval. However, if the Regional Water Board performed only one inspection, the Permittee shall conduct the second required mandatory compliance inspection.

(2) **Level of Inspection:** Each Permittee shall confirm that each operator:

(A) Has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan (SWPPP) is available on-site.

(B) Is effectively implementing BMPs in compliance with County and municipal

ordinances. Facilities must implement the source control BMPs identified in subpart 5.D.3. and Appendix D, *California Stormwater Industrial and Commercial BMP Handbook (2003)*; or

(C) Has applied and has a current No Exposure Certification (and WDID number) for facilities subject to this requirement.

3. Ensure Compliance of Critical Sources

(a) **BMP Implementation:** Facilities must implement the source control BMPs identified in Part 5. D. 2. and, as applicable, Appendix D, *California Stormwater Industrial and Commercial BMP Handbook (2003)*. In the event that a Permittee determines that a BMP is infeasible at any site, the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not protective of water quality standards, Permittees may require additional site-specific controls.

(b) **Environmentally Sensitive Areas (ESAs) and Impaired Waters:** For critical sources that discharge to MS4s that directly discharge to ESAs or to CWA § 303(d) listed impaired waterbodies, the Permittees shall require operators to implement additional pollutant specific controls to reduce pollutants in storm water runoff that are causing or contributing to exceedances of water quality objectives. A Regional Board approved TMDL Implementation Plan for the receiving water will substitute for this requirement.

(c) **Progressive Enforcement:** Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements within a reasonable time period as specified below.

(1) In the event that a Permittee determines, based on an inspection conducted, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement actions which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection.

(2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take

enforcement action as established through authority in its municipal code and ordinances or through the judicial system.

(3) Each Permittee shall maintain records and make them available on request to the Regional Water Board, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.

4. Interagency Coordination

(a) **Referral of Violations of the Municipal Storm Water Ordinances and California Water Code § 13260:** A Permittee may refer a violation(s) of § 13260 by Industrial and Commercial facilities to the Regional Water Board provided that under its municipal storm water ordinance the Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must be documented with:

(1) Two follow-up inspections
(2) Two warning letters or notices of violation

(b) **Referral of Violations of the Industrial Activities Storm Water General Permit (IASGP), including Requirements to File a Notice of Intent or No Exposure Certification:** For those facilities in violation of the municipal storm water ordinance and subject to the IASGP, Permittees may escalate referral of such violations to the Regional Water Board (electronically on a quarterly basis to the Regional Water Board's Storm Water Site at MS4stormwaterrb4@waterboards.ca.gov) after one inspection and one written notice (copied to the Regional Water Board) to the operator regarding the violation. In making such referrals, Permittees shall include, at a minimum, the following documentation:

(1) Name of the facility
(2) Operator of the facility
(3) Owner of the facility
(4) WDID Number (if applicable)
(5) Industrial activity being conducted at the facility that is subject to the IASGP
(6) Records of communication with the facility operator regarding the violation, which shall include at least an inspection report
(7) The written notice of the violation copied to the Regional Water Board

(c) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Water Board Staff:** Each Permittee shall initiate, within one business day,[10] investigation of complaints (other than non-storm water discharges) to the MS4 from facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the municipal storm water urban runoff ordinances and, if necessary, to oversee corrective action.

(d) **Assistance of Regional Water Board Enforcement Actions:** As directed by the Regional Water Board Executive Officer, Permittees shall assist Regional Water Board enforcement actions by: helping in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Water Board inspectors; appearing as witnesses in Regional Water Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.

(e) **Participation in a Task Force:** The Permittees shall participate with the Regional Water Board, and other public agencies on an enforcement task force such as the Storm Water Task Force, to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.

E. Planning and Land Development Program

I. Purpose

1. The Permittees shall implement a Planning and Land Development Program pursuant to part 4.E. for all New Development and Redevelopment projects subject to this Order to:

(a) Lessen the water quality impacts of development by using smart growth practices such as compact development, directing development towards existing communities via infill or redevelopment, safeguarding of environmentally sensitive areas, mixing of land uses (e.g., homes, offices, and shops), transit accessibility, and better pedestrian and bicycle amenities.

[10] Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to "initiate" the investigation within that one business day. However, the Regional Water Board would expect that the initial investigation, including a site visit, to occur within four business days.

(b) Minimize the adverse impacts from storm water runoff on the biological integrity of Natural Drainage Systems and the beneficial uses of waterbodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100).
(c) Minimize the percentage of effective impervious surfaces on land developments to mimic predevelopment water balance through infiltration, evapotranspiration and reuse.
(d) Minimize pollutant loadings from impervious surfaces such as roof-tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs (including Source Control BMPs such as good housekeeping practices), Low Impact Development Strategies, and Treatment Control BMPs.
(e) Properly select, design and maintain Treatment Control BMPs and Hydromodification Control BMPs to address pollutants that are likely to be generated, assure long-term function, and to avoid the breeding of vectors.[11]
(f) Prioritize the selection of BMPs suites to remove storm water pollutants, reduce storm water runoff volume, and beneficially reuse storm water to support an integrated approach to protecting water quality and managing water resources in the following order of preference:
    (1) Infiltration BMPs
    (2) BMPs that store and reuse storm water runoff.
    (3) BMPs that incorporate vegetation to promote pollutant removal and runoff volume reduction and integrate multiple uses
    (4) BMPs which percolate runoff through engineered soil and allow it to discharge downstream slowly
    (5) Approved modular/ proprietary treatment control BMPs that are based on LID concepts and that meet pollution removal goals

II. Applicability

1. New Development Projects.
(a) Development projects subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution, prior to completion of the project(s), are:
    (1) All development projects equal to 1 acre or greater of disturbed area and adding more than 10,000 square feet of impervious surface area

[11] Treatment BMPs when designed to drain within 72 hours of the end of rainfall minimize the potential for the breeding of vectors.

(2) Industrial park 10,000 square feet or more of surface area
(3) Commercial strip mall 10,000 square feet or more of impervious surface area
(4) Retail gasoline outlet 5,000 square feet or more of surface area
(5) Restaurant (SIC 5812) 5,000 square feet or more of surface area
(6) Parking lot 5,000 square feet or more of impervious surface area, or with 25 or more parking spaces
(7) Streets, roads, highways, and freeway construction of 10,000 square feet or more of impervious surface area shall incorporate USEPA guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets to the maximum extent practicable.
(8) Automotive service facilities (SIC 5013, 5014, 5511, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area]
(9) Redevelopment projects in subject categories that meet Redevelopment thresholds (identified in subpart E.II.2 below)
(10) Projects located in or directly adjacent to, or discharging directly to an Environmentally Sensitive Area (ESA), where the development will:
  (A) Discharge storm water runoff that is likely to impact a sensitive biological species or habitat; and
  (B) Create 2,500 square feet or more of impervious surface area
(11) Single-family hillside homes. To the extent that a Permittee may lawfully impose conditions, mitigation measures or other requirements on the development or construction of a single-family home in a hillside area as defined in the applicable Permittee's Code and Ordinances, each Permittee shall require that during the construction of a single-family hillside home, the following measures to be implemented:
    (A) Conserve natural areas
    (B) Protect slopes and channels
    (C) Provide storm drain system stenciling and signage
    (D) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability

(E) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability

2. Redevelopment Projects
   (a) Redevelopment projects subject to Permittee conditioning and approval for the design and implementation of post-construction controls to mitigate storm water pollution, prior to completion of the project(s), are:
      (1) Land-disturbing activity that results in the creation or addition or replacement of 5,000 square feet or more of impervious surface area on an already developed site on development categories identified in subpart 4.E.III.1.(a)-(c).
      (2) Where Redevelopment results in an alteration to more than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, the entire project must be mitigated.
      (3) Where Redevelopment results in an alteration to less than fifty percent of impervious surfaces of a previously existing development, and the existing development was not subject to post development storm water quality control requirements, only the alteration must be mitigated, and not the entire development.
   (b) Redevelopment does not include routine maintenance activities that are conducted to maintain original line and grade, hydraulic capacity, original purpose of facility or emergency redevelopment activity required to protect public health and safety. Impervious surface replacement, such as the reconstruction of parking lots and roadways which does not disturb additional area and maintains the original grade and alignment, is considered a routine maintenance activity. Redevelopment does not include the repaving of existing roads to maintain original line and grade.
   (c) Existing single-family dwelling and accessory structures are exempt from the Redevelopment requirements unless such projects create, add, or replace 10,000 square feet of impervious surface area.

3. Effective Date –The New Development and Redevelopment requirements contained in Section E of the Order shall begin 90 calendar days after Regional Board Executive Officer

approval of the changes to the Technical Guidance Manual needed to comply with this permit. After that date all discretionary permit projects or project phases that have not been deemed complete for processing, or discretionary permit projects without vesting tentative maps that have not requested and received an extension of previously granted approvals must comply with the requirements in Section E. Projects that have been deemed complete prior to the update of the technical design manual are not subject to this section. For Permittee's projects the effective date shall be the date the governing body or their designee approves initiation of the project design.

III. New Development/ Redevelopment Performance Criteria

1. Integrated Water Quality/Flow Reduction/Resources Management Criteria

(a) Except as provided in subpart 4.E.III.1.(c) below, Permittees shall require all New Development and Redevelopment projects identified in subpart 4.E.II to control pollutants, pollutant loads, and runoff volume emanating from impervious surfaces through infiltration, storage for reuse, evapo-transpiration, or bioretention/biofiltration by reducing the percentage of Effective Impervious' Area (EIA) to 5 percent or less of the total project area.

(b) Impervious surfaces may be rendered "ineffective," and thus not count toward the 5 percent EIA limitation, if the stormwater runoff from those surfaces is fully retained onsite for the design storm event specified in provision (c), below. To satisfy the EIA limitation and low-impact development requirements, the permittees must require stormwater runoff to be infiltrated, reused, or evapotranspired onsite through a stormwater management technique allowed under the terms of this permit and implementing documents.

(c) The permittees shall require all features constructed or otherwise utilized to render impervious surfaces "ineffective," as described in provision (b), above, to be properly sized to infiltrate, store for reuse, or evapotranspire, without any runoff at least the volume of water that results from:

(1) The 85th percentile 24-hour runoff event determined as the maximized capture stormwater volume for the area

using a 48 to 72-hour draw down time, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998);

(2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment by the method recommended in the Ventura County Technical Guidance Manual for Storm Water Quality Control Measures (July 2002 and its revisions); or

(3) The volume of runoff produced from a 0.75 inch storm event.

(d) To address any impervious surfaces that may not be rendered "ineffective, " surface discharge of stormwater runoff if any, that results from New Development and Redevelopment projects identified in subpart 4.E.II which have complied with subparts 4.E.III.1.(a)-(c), above, shall be mitigated in accordance with subpart 4.E.III.1.(c).

2. Alternative Compliance for Technical Infeasibility

(a) To encourage smart growth and infill development of existing urban centers where onsite compliance with post-construction requirements may be technically infeasible, the permittees may allow projects that are unable to meet the Integrated Water Quality/Flow Reduction/Resources Management Criteria in subpart 4.E.III.1, above, to comply with this permit through the alternative compliance measures described in subpart 4.E.III.2., below.

(b) To utilize alternative compliance measures, the project applicant must demonstrate that compliance with the applicable post-construction requirements would be technically infeasible by submitting a site-specific hydrologic and/or design analysis conducted and endorsed by a registered professional engineer, geologist, architect, and/or landscape architect. Technical infeasibility may result from conditions including the following:

(1) Locations where seasonal high groundwater is within 5 feet of the surface;

(2) Locations within 100 feet of a groundwater well used for drinking water;

(3) Brownfield development sites or other locations where pollutant mobilization is a documented concern;

(4) Locations with potential geotechnical hazards;

(5) Smart growth and infill or redevelopment locations where the density and/or nature of the project would create significant difficulty for compliance with the onsite volume retention requirement; and

(6) Other site or implementation constraints identified in the LID Technical Guidance document required by subpart 4.E.IV.5.

(c) Alternative Compliance Measures. When a permittee finds that a project applicant has demonstrated technical infeasibility, the permittee shall identify alternative compliance measures that the project will need to comply with as a substitute for the otherwise applicable post-construction requirements listed in subparts 4.E.III.1.(a)-(c) of this permit. The Ventura County Technical Guidance Manual shall be revised to identify the alternative compliance measures and shall include the following requirement

(1) Minimum onsite requirement. The project must reduce the percentage of Effective Impervious Area to no more than 30 percent of the total project area and treat all remaining runoff pursuant to the design and sizing requirements of subparts 4.E.III.1.(b)-(d).

(2) Offsite mitigation volume. The difference in volume between the amount of stormwater infiltrated, reused, and/or evapotranspired by the project onsite and the otherwise applicable requirements of subparts 4.E.III.1.(a)-(c) (the "offsite mitigation volume'), above, must be mitigated by the project applicant either by performing offsite mitigation that is approved by the permittee or by providing sufficient funding for public or private offsite mitigation to achieve equivalent stormwater volume and pollutant load reduction through infiltration, reuse, and/or evapotranspiration.

(3) Location of off site mitigation. Offsite mitigation projects must be located in the same sub-watershed (defined as draining to the same hydrologic area in the Basin Plan) as the new development or redevelopment

project. A list of eligible public and private offsite mitigation projects available for funding shall be identified by the Permittees and provided to the project applicant. Off site mitigation projects include green streets projects, parking lot retrofits, other site specific LID BMPs, and regional BMPs. Project applicants seeking to utilize these alternative compliance provisions may propose other offsite mitigation projects, which the Permittees may approve if they meet the requirements of this subpart.

(4) Timing and Reporting Requirements for Offsite Mitigation Projects. The Permittee(s) shall develop a schedule for the completion of offsite mitigation projects, including milestone dates to identify fund, design, and construct the projects. Offsite mitigation projects shall be completed as soon as possible, and at the latest, within 4 years of the certificate of occupancy for the first project that contributed funds toward the construction of the offsite mitigation project, unless a longer period is otherwise authorized by the Executive Officer. For public offsite mitigation projects, the permittees must provide in their annual reports a summary of total offsite mitigation funds raised to date and a description (including location, general design concept, volume of water expected to be retained, and total estimated budget) of all pending public offsite mitigation projects. Funding sufficient to address the offsite mitigation volume must be transferred to the permittee (for public offsite mitigation projects) or to an escrow account (for private offsite mitigation projects) within one year of the initiation of construction.

(5) The project applicant must demonstrate that the EIA achieved onsite is as close to 5 percent EIA as technically feasible, given the site's constraints.

(d) Watershed equivalence. Regardless of the methods through which permittees allow project applicants to implement alternative compliance measures, the sub-watershed -wide (defined as draining to the same hydrologic area in the Basin Plan) result of all development must be at least the same level of water quality protection as would have been achieved if all projects utilizing these alternative compliance provisions had complied with subparts 4.E.III.1.(a)-(d) of the permit. The permittees shall provide in their annual report to the Regional Board a list of mitigation project descriptions and pollutant

and flow reduction analyses (compiled from design specifications submitted by project applicants and approved by the permittee(s)) comparing the expected aggregate results of alternative compliance projects to the results that would otherwise have been achieved by meeting the 5 percent EIA requirement onsite.

IV. Implementation

1. Maintenance Agreement and Transfer
   (a) Prior to issuing approval for final occupancy each Permittee shall require that all new development and redevelopment projects subject to post-construction BMP requirements provide an operation and maintenance plan and verification of ongoing maintenance provisions for LID practices, Treatment Control BMPs, and Hydromodification Control BMPs including but not limited to: final map conditions, legal agreements, covenants, conditions or restrictions, CEQA mitigation requirements, conditional use permits, and/ or other legally binding maintenance agreements.
      (1) Verification at a minimum shall include the developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred; and either
         (A) A signed statement from the public entity assuming responsibility for BMP maintenance; or
         (B) Written conditions in the sales or lease agreement, which require the property owner or tenant to assume responsibility for BMP maintenance and conduct a maintenance inspection at least once a year; or
         (C) Written text in project covenants, conditions, and restrictions (CCRs) for residential properties assigning BMP maintenance responsibilities to the Home Owners Association (HOA); or
         (D) Any other legally enforceable agreement or mechanism that assigns responsibility for the maintenance of BMPs.
   (b) Each Permittee shall require all development projects subject to post-construction BMP requirements to provide a plan for the operation and maintenance of all structural and treatment controls. The Operation and Maintenance plan shall follow the Technical Guidance Manual Appendix D "Maintenance Plan Guidance" (or subsequent guidance manual) for each BMP component. The plan shall be submitted for examination of relevance to keeping the BMPs in proper working order. Where BMPs are transferred to Permittee for ownership and maintenance, the plan shall also include all relevant costs for upkeep of BMPs in the transfer. Operation and Maintenance plans for private BMPs shall be kept on site for periodic review by Permittee inspectors.

2. Tracking, Inspection, and Enforcement of Post-Construction BMPs
   (a) Each Permittee shall implement a tracking system and an inspection and enforcement program for new development and redevelopment post-construction storm water BMPs as set fort in part 4.E no later than May 7, 2010.
      (1) Implement a GIS or other electronic system for tracking projects that have been conditioned for post-construction BMPs. The electronic system, at a minimum, should contain the following information:

(A) Municipal Project ID
(B) State WDID No
(C) Project Acreage
(D) BMP Type and Description
(E) BMP Location (coordinates)
(F) Date of Acceptance
(G) Date of Maintenance Agreement
(H) Maintenance Records
(I) Inspection Date and Summary
(J) Corrective Action
(K) Date Certificate of Occupancy Issued
(L) Replacement or Repair Date

(b) Inspect all development sites upon completion of construction and prior to the issuance of occupancy certificates to ensure proper installation of LID measures, structural BMPs, treatment control BMPs and Hydromodification control BMPs. The inspection may be combined with other inspections provided it is conducted by trained personnel.

(c) Verify proper maintenance and operation of post-construction BMPs previously approved for new development and redevelopment and operated by the Permittees. The post construction BMP maintenance inspection program shall incorporate the following elements:
(1) Post-construction BMP Maintenance Inspection checklist.
(2) Inspection at least once every 2 years, beginning May 7, 2010, of post-construction BMPs to assess operation conditions with particular attention to:
(3) Criteria and procedures for post construction Treatment Control and Hydromodification Control BMP repair, replacement, or re-vegetation.

(d) For post construction BMPs operated and maintained by parties other than the Permitees the Permittees shall require annual reports by the other parties demonstrating proper maintenance and operations.

(e) Undertake enforcement as appropriate based on the results of the inspection.

3. Alternative Post Construction Storm Water Mitigation Programs

(a) A Permittee or a coalition of Permittees may apply to the Regional Water Board for approval of a Redevelopment Project Area Master Plan (RPAMP) for redevelopment projects within the Redevelopment Project Areas, in consideration of exceptional site constraints that inhibit site-by-site or project-by-project implementation of post-construction requirements.

(b) Upon review and a determination by the Regional Water Board Executive Officer that the proposal is technically valid and appropriate, the Regional Water Board may consider for approval such a program if its implementation will:
(1) Result in equivalent or superior reduction of storm water pollutant loads in comparison to individual projects regulated by this permit.
(2) Satisfy, on a Redevelopment Project Area-wide basis, the hydromodification criteria of this section.

(3) Reduce the percentage of Effective Impervious Area (EIA) to a target of 5 percent or less of the Redevelopment Project Area, using properly sized storm water treatment/collection features, as described in this Section.
(4) Be fiscally sustainable and have secure funding; and
(5) Be completed in four years of the adoption date of this permit.

(c) The RPAMP should prioritize the implementation of LID storm water mitigation measures, as described in this section.

(d) A Permittee or a coalition of Permittees may apply to the Regional Water Board for approval of a Redevelopment Project Area Master Plan (RPAMP) that takes into consideration the balancing of water quality protection with the needs for adequate housing, population growth, public transportation and management, land recycling, and urban revitalization.

(e) For the RPAMP to be considered, a technical panel of the Local Government Commission or an equivalent state or regional planning agency must have reviewed and approved the proposed RPAMP, prior to its submittal to the Regional Water Board. The Regional Water Board Executive Officer may then consider the RPAMP for approval, or elect to submit it to the Regional Water Board for consideration.

(f) The RPAMP, on approval, may substitute in part or wholly for post-construction requirements.

(g) Redevelopment Project Areas include the following:
(1) City Center areas
(2) Historic District areas
(3) Brownfield areas
(4) Infill Development areas
(5) Urban Transit Villages
(6) Any other redevelopment area so designated by the Regional Water Board

(h) Nothing in these provisions shall be construed as to delay the implementation of post-construction control requirements, as approved in this Order.

4. Developer Technical Guidance and Information

(a) The Permittees shall update the Ventura County Technical Guidance Manual for Storm Water Quality Control Measures to include, at a minimum, the following:
(1) Hydromodification Control criteria described in this Order, including numerical criteria.
(2) Expected BMP pollutant removal performance including effluent quality (ASCE/ U.S. EPA International BMP Database, CASQA New Development BMP Handbook, technical reports, local data on BMP performance, and the scientific literature appropriate for southern California geography and climate).
(3) Selection of appropriate BMPs for storm water pollutants of concern.
(4) Data on Observed Local Effectiveness and performance of implemented BMPs.
(5) BMP Maintenance and Cost Considerations.

(6) Guiding principles to facilitate integrated water resources planning and management in the selection of BMPs, including water conservation, groundwater recharge, public recreation, multipurpose parks, open space preservation, and redevelopment retrofits.

(7) LID principles and specifications, including the objectives and specifications for integration of LID strategies in the areas of:
- (A) Site Assessment.
- (B) Site Planning and Layout.
- (C) Vegetative Protection, Revegetation, and Maintenance.
- (D) Techniques to Minimize Land Disturbance.
- (E) Techniques to Implement LID Measures at Various Scales
- (F) Integrated Water Resources Management Practices.
- (G) LID Design and Flow Modeling Guidance.
- (H) Hydrologic Analysis.
- (I) LID Credits.

(b) Permittees shall update the Technical Guidance Manual within 365 days of the adoption of this Order.

(c) The Permittees shall facilitate implementation of LID by providing key industry, regulatory, and other stakeholders with information regarding LID objectives and specifications contained in the LID Technical Guidance Section through a training program. The LID training program will include the following:

(1) LID targeted sessions and materials for builders, design professionals, regulators, resource agencies, and stakeholders

(2) A combination of awareness on national efforts and local experience gained through LID pilot projects and demonstration projects

(3) Materials and data from LID pilot projects and demonstration projects including case studies

(4) Guidance on how to integrate LID requirements into the local regulatory program(s) and requirements

(5) Availability of the LID Technical Guidance regarding integration of LID measures at various project scales

(6) Guidance on the relationship among LID strategies, Source Control BMPs, Treatment Control BMPs, and Hydromodification Control requirements

The Permittees shall submit revisions to the Ventura County Technical Guidance Manual to the Regional Board for Executive Officer approval.

5. Project Coordination

(a) Each Permittee shall facilitate a process for effective approval of post-construction storm water control measures. The process shall include:

(1) Detailed BMP review including BMP sizing calculations, BMP pollutant removal performance, and municipal approval; and

(2) An established structure for communication and delineated authority between and among municipal departments that have jurisdiction over project review, plan approval, and project construction through memoranda of understanding (MOU) or an equivalent agreement.

V. State Statute Conformity

1. California Environmental Quality Act (CEQA) Document Update
   (a) Each Permittee shall incorporate into its CEQA process no later than November 7, 2009 those additional procedures necessary for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents.
      (1) The procedures shall require consideration of the following:
         (A) Potential impact of project construction on storm water runoff.
         (B) Potential impact of project post-construction activity on storm water runoff.
         (C) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.
         (D) Potential for discharge of storm water to impair the beneficial uses of the receiving waters.
         (E) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and waterbodies.
         (F) Potential for significant changes in the flow velocity or volume of storm water runoff to cause harm to or impair the beneficial uses of natural drainage systems.
         (G) Potential for significant increases in erosion at the project site or surrounding areas.

2. General Plan Update
   (a) Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended:
      (1) Land Use
      (2) Housing
      (3) Conservation
      (4) Open Space
   (b) Each Permittee shall provide the Regional Water Board with the draft amendment or revision when a listed General Plan element or General Plan is noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq*.

F. Development Construction Program

I. Each Permittee shall implement a construction program that prevents illicit construction-related discharges of pollutants into the MS4, implements and maintains structural and non-structural BMPs to reduce pollutants in stormwater runoff from construction sites, reduces construction site discharges of pollutants from the MS4 to the MEP, and prevents construction site discharges from the MS4 from causing or contributing to a violation of water quality standards.

1. BMP Implementation - Construction Sites Less Than One Acre

(a) Each Permittee shall require the implementation of an effective combination of erosion and sediment control BMPs from Table 6 to prevent erosion and sediment loss, and the discharge of construction wastes.[1]

Table 6 - BMPs at Construction sites less than 1 acre

Minimum Set of BMPs for All Construction Sites	**CASQA Handbook**	**Caltrans Handbook**
For Erosion Control		
Scheduling	EC-1	SS-1
Preservation of Existing Vegetation	EC-2	SS-2
Sediment Controls		
Silt Fence	SE-1	SC-1
Sand Bag Barrier	SE-8	SC-8
Stabilized Construction Site Entrance/Exit	TC-1	TC-1
Non-Storm Water Management		
Water Conservation Practices	NS-1	NS-1
Dewatering Operations (Groundwater dewatering only under NPDES Permit No. CAG994004).[2]	NS-2	NS-2
Waste Management		
Material Delivery and Storage	WM-1	WM-1
Stockpile Management	WM-3	WM-2
Spill Prevention and Control	WM-4	WM-4
Solid Waste Management	WM-5	WM-5
Concrete Waste Management	WM-8	WM-8
Sanitary/ Septic Waste Management	WM-9	WM-9

[1] The BMPs are taken from the *California BMP Handbook, Construction, January 2003* and the *Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices (BMPs) Manual, March 2003*, and addenda.

[2] Ponded storm water may be discharged at a concentration of Total Suspended Solids (TSS) of 100mg/L or less.

2. BMP Implementation - Construction Sites One Acre but Less than 5 acres.
   (a) Each Permittee shall require the implementation of an effective combination of appropriate erosion and sediment control BMPs from Table 7 in addition to the ones identified in Table 6 to prevent erosion and sediment loss, and the discharge of construction wastes:

Table 7 - BMPs at Construction sites 1acre or greater but less than 5 acres

BMPs	**CASQA Handbook**	**Caltrans Handbook**
For Erosion Control		
Hydraulic Mulch	EC-3	SS-3
Hydroseeding	EC-4	SS-4
Soil Binders	EC-5	SS-5
Straw Mulch	EC-6	SS-6
Geotextiles and Mats	EC-7	SS-7
Wood Mulching	EC-8	SS-8
Sediment Controls		
Fiber Rolls	SE-5	SC-5
Gravel Bag Berm	SE-6	SC-6
Street Sweeping and/ or Vacuum	SE-7	SC-7
Storm Drain Inlet Protection	SE-10	SC-10
Additional Controls		
Wind Erosion Controls	WE-1	WE-1
Stabilized Construction Entrance/ Exit	TC-1	TC-1
Stabilized Construction Roadway	TC-2	TC-2
Entrance/ Exit Tire Wash	TC-3	TC-3
Non-Storm Water Management		
Vehicle and Equipment Washing	NS-8	NS-8
Vehicle and Equipment Fueling	NS-9	NS-9

3. BMP Implementation - Construction Sites 5 acres and Greater
   (a) Each Permittee shall require the implementation of an effective combination of the following BMPs in Table 8 (BMPs at Construction sites 5 acres or greater) in addition to the ones identified in Table 6 (BMPs at Construction sites less than 1 acre) and Table 7 (BMPs at Construction sites 1acre or greater but less than 5 acres) at all construction sites 5 acres and greater to prevent erosion and sediment loss, and the discharge of construction wastes. Erosion control BMPs shall be preferred to sediment control BMPs.

Table 8 - BMPs at Construction sites 5 acres or greater

BMPs	**CASQA Handbook**	**Caltrans Handbook**
Sediment Controls		
Sediment Basin	SE-2	SC-2
Check Dam	SE-4	SC-4
Tracking Control BMPs		
Stabilized Construction Entrance/ Exit	TR-1	TC-1
Non-Storm Water Management		
Vehicle and Equipment Maintenance	NS-10	NS-10
Waste Management		
Material Delivery and Storage	WM-1	WM-1
Spill Prevention and Control	WM-4	WM-4
Concrete Waste Management	WM-8	WM-8
Sanitary/ Septic Waste Management	WM-9	WM-9

4. Enhanced Construction BMP Implementation.
   (a) Each Permittee shall implement, or require implementation of, enhanced practices that preclude impacts to water quality posed by all construction sites on hillsides as defined in this Order and construction sites that directly discharge to a waterbody listed on the CWA § 303 (d) list for siltation or sediment, or that occur within or directly adjacent to an Environmentally Sensitive Area (ESAs). Construction sites located on hillsides, adjacent to CWA 303(d) listed waters for siltation or sediment, and directly adjacent to ESAs are termed "High risk sites."
   (b) Each Permittee shall require implementation of enhanced practices for high risk sites which shall include increased BMP inspection and maintenance requirements.
      (1) Each Permittee shall require that high risk sites shall be inspected by the project proponent's Qualified SWPPP Developer or Qualified SWPPP Practitioner or personnel or consultants who are Certified Professionals in Erosion and Sediment Control (CPESC) at the time of BMP installation, at least weekly during the wet season, and at least once each 24 hour period during a storm event that generates runoff from the site, to identify BMPs that need maintenance to operate effectively, that have failed or could fail to operate as intended.
      (2) During the wet season, the area of disturbance shall be limited to the area that can be controlled with an effective combination of erosion and sediment

control BMPs. Enhanced sediment controls should be used in combination with erosion controls and should target portions of the site that cannot be effectively controlled by standard erosion controls described above. Effective sediment and erosion control BMPs proposed by the proponent shall include the BMPs listed in Table 9 below. The project proponents are responsible to implement the BMPs below unless shown unnecessary. The Permittee shall require that the project proponent retain records of the inspection and a determination and rationale of the BMPs selected to control runoff.

Table 9 - Enhanced Construction BMP Implementation.

CONSTRUCTION SITE BMPs	CASQA Handbook	Caltrans Handbook
Erosion Controls		
Scheduling	EC-1	SS-1
Preservation of Existing Vegetation	EC-2	SS-2
Hydraulic Mulch	EC-3	SS-3
Hydroseeding	EC-4	SS-4
Soil Binders	EC-5	SS-5
Straw Mulch	EC-6	SS-6
Geotextiles and Mats	EC-7	SS-7
Wood Mulching	EC-8	SS-8
Slope Drains	EC-11	SS-11
Sediment Controls		
Silt Fence	SE-1	SC-1
Fiber Rolls	SE-5	SC-5
Sediment Basin	SE-2	SC-2
Check Dam	SE-4	SC-4
Gravel Bag Berm	SE-6	SC-6
Street Sweeping and/or Vacuum	SE-7	SC-7
Sand Bag Barrier	SE-8	SC-8
Storm Drain Inlet Protection	SE-10	SC-10
Additional Controls		
Wind Erosion Controls	WE-1	WE-1
Stabilized Construction Entrance/Exit	TC-1	TC-1
Stabilized Construction Roadway	TC-2	TC-2
Entrance/Exit Tire Wash	TC-3	TC-3
Advanced Treatment Systems[1]		
Non-Storm Water Management		
Water Conservation Practices	NS-1	NS-1
Dewatering Operations (Groundwater dewatering only under NPDES Permit No. CAG994004).19	NS-2	NS-2
Vehicle and Equipment Washing	NS-8	NS-8

[1] If appropriate given natural background stormwater runoff and receiving water quality conditions.

CONSTRUCTION SITE BMPs	CASQA Handbook	Caltrans Handbook
Vehicle and Equipment Fueling	NS-9	NS-9
Vehicle and Equipment Maintenance	NS-10	NS-10
Waste Management		
Material Delivery and Storage	WM-1	WM-1
Stockpile Management	WM-3	WM-2
Spill Prevention and Control	WM-4	WM-4
Solid Waste Management	WM-5	WM-5
Concrete Waste Management	WM-8	WM-8
Sanitary/Septic Waste Management	WM-9	WM-9

5. Local Agency Requirements
   (a) Each Permittee shall require for all construction sites 1 acre or greater, compliance with all conditions identified in the preceding subparts F.1 - F.4, and the following requirements:
      (1) Local Storm Water Pollution Prevention Plan (Local SWPPP),
         (A) Each Permittee shall require the preparation and submittal of a Local SWPPP, for the Permittee's review and written approval prior to issuance of a grading or construction permit for construction or demolition projects. The Permittees' approval signature shall be contained within the first pages of the Local SWPPP
            (i) The Permittee shall not approve any Local SWPPP unless it contains appropriate site-specific construction site BMPs, specific locations, and maintenance schedules.
            (ii) The Local SWPPP must include the rationale used for selecting or rejecting BMPs for various construction phases and weather conditions. The project architect, or engineer of record, or authorized qualified designee, must sign a statement on the Local SWPPP to the effect:
               (I) *"As the architect/ engineer of record, I have selected appropriate BMPs to effectively minimize the negative impacts of this project's construction activities on storm water quality. The project owner and contractor are aware that the selected BMPs must be installed, monitored, and maintained to ensure their effectiveness. The BMPs not selected for implementation are redundant or deemed not applicable to the proposed construction activity."*
      (2) Certification Statement
         (A) Each Permittee shall require that each landowner or the landowner's agent sign a statement on the Local SWPPP to the effect:
            (i) *"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons*

directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that submitting false and/ or inaccurate information, failing to update the Local SWPPP to reflect current conditions, or failing to properly and/ or adequately implement the Local SWPPP may result in revocation of grading and/ or other permits or other sanctions provided by law."

(ii) The Local SWPPP certification shall be signed by the property owner or owner's representative/designee. If the Local SWPPP or SWPPP is being prepared by the local agency then the appropriate authority of the local agency shall sign the document.

6. Roadway Paving or Repaving Operations (For Private or Public Projects)
   (a) Each Permittee shall require that for any project that includes roadbed or street paving, repaving, patching, digouts, or resurfacing roadbed surfaces, that the following BMPs be implemented for each project:
      (1) Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall unless required by emergency conditions
      (2) Install sand bags or gravel bags and filter fabric at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat
      (3) Prevent the discharge of release agents including soybean oil, other oils, or diesel to the storm water drainage system or receiving waters.
      (4) Minimize non storm water runoff from water use for the roller and for evaporative cooling of the asphalt
      (5) Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly
      (6) Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly
      (7) Collect solid waste by vacuuming or sweeping and securing in an appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly
      (8) Cover the "cold-mix" asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm
      (9) Cover loads with tarp before haul-off to a storage site, and do not overload trucks
      (10) Minimize airborne dust by using water spray during grinding
      (11) Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near storm water drainage system or receiving waters
      (12) Protect stockpiles with a cover or sediment barriers during a rain

7. Electronic Site Tracking System
   (a) Each Permittee shall use an electronic system to track grading permits, encroachment permits, demolition permits, building permits, or construction permits (and any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.

8. Inspections
   (a) Each Permittee shall inspect all construction sites for the implementation of storm water quality controls a minimum of once during the wet season. Concurrently, each Permittee shall ensure that:
      (1) The Local SWPPP is reviewed for compliance with local codes, ordinances, and permits.
      (2) A follow-up inspection takes place within two weeks for inspected sites that have not adequately implemented their Local SWPPP.
   (b) Each Permittee shall take additional enforcement actions to achieve compliance as specified in municipal codes, if compliance with municipal codes, ordinances, or permits has not been attained.
   (c) Each Permittee can refer sites to the Regional Water Board for joint enforcement actions for violation of municipal storm water ordinances and the Construction Activities Storm Water General Permit (CASGP), or Small Linear Underground/ Overhead Construction Projects General Permit (small LUPs), after conducting a minimum of 2 site inspections and issuing a minimum of 2 written notices to the operator regarding the violation (copied to the Regional Water Board). In making such referrals, Permittees shall include, at a minimum, the following documentation:
      (1) Name of the site
      (2) WDID number
      (3) Site developer
      (4) Site owner
      (5) Records of communication with the site operator regarding the violation(s), which shall include at least an inspection report
      (6) Written notice of the violation copied to the Regional Water
   (d) Prior to approving and/ or signing off for occupancy and issuing the Certificate of Occupancy for all construction projects subject to post-construction controls, each Permittee shall inspect the constructed site design, source control and treatment control BMPs to verify that they have been constructed in compliance with all specifications, plans, permits, ordinances, and this Order. The initial/ acceptance BMP verification inspection does not constitute a maintenance and operation inspection, as required in the preceding subpart E.IV.2(c).

9. State Conformity Requirements
   (a) Each Permittee shall ensure that no grading permit, encroachment permit, demolition permit, building permit, electrical permit, or construction permit (or any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) is issued for any project requiring coverage under the CASGP or Small LUP General Permit[1] unless:
      (1) Proof of filing a Notice of Intent for coverage under a State NPDES permit is demonstrated).
      (2) Demonstration or Certification that a SWPPP has been prepared by the project developer.
      (3) Proof of Change of Information form (COI) and a copy of the modified SWPPP(s) at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going.

10. Interagency Coordination
   (a) **Referral of Violations:**
   A Permittee may refer a violator of the municipal storm water ordinance and CWC § 13260 to the Regional Water Board provided that the Permittee has made a good faith effort at progressive enforcement consistent with the preceding subpart F.8(c). At a minimum, the Permittee's good faith effort shall be documented with:
      (1) A minimum of 2 follow-up inspection reports (inspections completed within 3 months).
      (2) A minimum of two warning letters or NOVs.
   (b) **Referral of Non-filers under the CASGP or the Small LUP General Permit:**
   Each Permittee shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) under the CASGP or Small LUP General Permit, to the Regional Water Board, no later than 15 days after making a determination of failure to file. In making such referrals, Permittees shall include, at a minimum, the following documentation:
      (1) Project location address
      (2) Project description
      (3) Developer or owners name with complete mailing address
      (4) Project size
      (5) Records of communication with the developer or owner regarding filing requirements

[1] NPDES Permit No. CAS000005, Waste Discharge Requirements For Discharges of Storm Water Runoff Associated with Small Linear Underground/ Overhead Construction Projects (Small LUP General Permit) for any linear land disturbing activity or activities (cumulatively) that will cause one acre or more of land disturbance but not more than 5 acres.

(c) **Investigation of Complaints Regarding Facilities – Transmitted by the Regional Water Board Staff:**
(1) Each Permittee shall initiate, within one business day,[1] an initial investigation of complaint(s) (other than non-storm water discharges) on the construction site(s) within its jurisdiction.
(A) The initial investigation shall include, at a minimum, an inspection on the facility and its perimeter to confirm the complaint and to determine if the site operator is effectively complying with the municipal storm water/ urban runoff ordinances, and to oversee corrective action.

(d) **Support of Regional Water Board Enforcement Actions – As directed by the Regional Water Board Executive Officer:**
(1) Each Permittee shall support Regional Water Board enforcement actions by:
(A) Assisting in identification of current owners, operators, and lessees of properties and sites.
(B) Providing staff, when available, for joint inspections with Regional Water Board inspectors.
(C) Appearing to testify as witnesses in Regional Water Board enforcement hearings.
(D) Providing copies of inspection reports and other progressive enforcement documentation.

G. Public Agency Activities Program

I. Each Permittee shall implement a Public Agency Activities Program to minimize storm water pollution impacts from public agency activities. Public Agency requirements consist of:
i. Public Construction Activities Management.
ii. Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards Management/ Municipal Operations.
iii. Vehicle and Equipment Wash Areas
iv. Landscape and Recreational Facilities Management
v. Storm Drain Operation and Management
vi. Streets and Roads Maintenance
vii. Public Industrial Activities Management
viii. Emergency Procedures
ix. Employee Training
x. Infrastructure Maintenance

1. Public Construction Activities Management
(a) Each Permittee shall implement and comply with the Planning and Land Development Program requirements in part 5.E. of this Order at Permittee owned

[1] Permittees may comply with the Permit by taking initial steps (such as logging, prioritizing, and tasking) to "initiate" the investigation within that one business day. However, the Regional Water Board would expect that the initial investigation, including a site visit, to occur within four business days.

or operated public construction projects for project types identified in part 5.E of this Order.

(b) Each Permittee shall implement and comply with the appropriate Development Construction Program requirements in part 5.F. of this Order at Permittee owned or operated construction projects as applicable.

(c) For public projects including those under a Capital Improvement Project Plan that disturb less than one acre of soil the Permittees shall require the development and implementation of a Storm Water Pollution Control Plan. The SWPCP shall include BMPs as identified in Tables 5, 9 and 10.

2. Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards Management/ Long Term Maintenance Programs

(a) Each Permittee shall implement the activity specific BMPs[1] listed in Table 10 when such activities occur at Permittee owned/leased facilities and job sites including but not limited to vehicle/ equipment maintenance facilities, material storage facilities, and corporation yards, and at any area that includes the activities as described in the following Tables. Additionally, for any activity or area described in the footnote below,[2] each Permittee shall also implement the BMPs in the Caltrans Storm Water Quality Handbook Maintenance Staff Guide described as B-4 in Table 10 (BMPs at Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards).

Table 10 - BMPs at Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards
From the Caltrans Storm Water Quality Handbook Maintenance Staff Guide **Appendix B**

Activity Specific BMPs	**Page**
General BMPs	B-4
Flexible Pavement	B-9
Asphalt Cement Crack and Joint Grinding/ Sealing	B-9
Asphalt Paving	B-10
Structural Pavement Failure (Digouts) Pavement Grinding and Paving	B-11
Emergency Pothole Repairs	B-13
Sealing Operations	B-14
Rigid Pavement	B-15
Portland Cement Crack and Joint Sealing	B-15
Mudjacking and Drilling	B-16
Concrete Slab and Spall Repair	B-17
Slope/ Drains/ Vegetation	B-19
Shoulder Grading	B-19
Nonlandscaped Chemical Vegetation Control	B-21
Nonlandscaped Mechanical Vegetation Control/ Mowing	B-23
Nonlandscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal	B-24

[1] These BMPs are identified in Appendix B of the *Caltrans Storm Water Quality Handbook Maintenance Staff Guide, May 2003*, and its addenda. Other BMPs may be substituted upon approval by the Executive Officer.

[2] Scheduling and Planning; Spill Prevention and Control; Sanitary/ Septic Waste Management; Material Use; Safer Alternative Products; Vehicle/ Equipment Cleaning, Fueling, and Maintenance; Illicit Connections Detection, Reporting and Removal; Illegal Spill / Discharge Control and Maintenance Facility Housekeeping Practices.

Activity Specific BMPs	Page
Fence Repair	B-25
Drainage Ditch and Channel Maintenance	B-26
Drain and Culvert Maintenance	B-28
Curb and Sidewalk Repair	B-30
Litter/ Debris/ Graffiti	B-32
Sweeping Operations	B-32
Litter and Debris Removal	B-33
Emergency Response and Cleanup Practices	B-34
Graffiti Removal	B-36
Landscaping	B-37
Chemical Vegetation Control	B-37
Manual Vegetation Control	B-39
Landscaped Mechanical Vegetation Control/ Mowing	B-40
Landscaped Tree and Shrub Pruning, Brush Chipping, Tree and Shrub Removal	B-41
Irrigation Line Repairs	B-42
Irrigation (Watering), Potable and Nonpotable	B-43
Environmental	B-44
Storm Drain Stenciling	B-44
Roadside Slope Inspection	B-45
Roadside Stabilization	B-46
Storm Water Treatment Devices	B-48
Traction Sand Trap Devices	B-49
Public Facilities	B-50
Public Facilities	B-50
Bridges	B-52
Welding and Grinding	B-52
Sandblasting, Wet Blast with Sand Injection and Hydroblasting	B-54
Painting	B-56
Bridge Repairs	B-57
Other Structures	B-59
Pump Station Cleaning	B-59
Tube and Tunnel Maintenance and Repair	B-61
Tow Truck Operations	B-63
Toll Booth Lane Scrubbing Operations	B-64
Electrical	B-65
Sawcutting for Loop Installation	B-65
Traffic Guidance	B-67
Thermoplastic Striping and Marking	B-67
Paint Striping and Marking	B-68
Raised/ Recessed Pavement Marker Application and Removal	B-70
Sign Repair and Maintenance	B-71
Median Barrier and Guard Rail Repair	B-73
Emergency Vehicle Energy Attenuation Repair	B-75
Snow and Ice Control	B-76
Snow Removal	B-76

Activity Specific BMPs	Page
Ice Control	B-77
Storm Maintenance	B-78
Minor Slides and Slipouts Cleanup/ Repair	B-78
Management and Support	B-80
Building and Grounds Maintenance	B-80
Storage of Hazardous Materials (Working Stock)	B-82
Material Storage Control (Hazardous Waste)	B-84
Outdoor Storage of Raw Materials	B-85
Vehicle and Equipment Fueling	B-86
Vehicle and Equipment Cleaning	B-87
Vehicle and Equipment Maintenance and Repair	B-88
Aboveground and Underground Tank Leak and Spill Control	B-90

3. Vehicle and Equipment Wash Areas
   (a) Each Permittee shall eliminate discharges of wash waters from vehicle and equipment washing no later than May 7, 2010 by implementing any of the following measures at existing facilities with vehicle or equipment wash areas:
      (1) Self-contain, and haul off for disposal
      (2) Equip with a clarifier
      (3) Equip with an alternative pre-treatment device; or
      (4) Plumb to the sanitary sewer
   (b) Each Permittee shall ensure that any municipal facilities constructed, redeveloped, or replaced has all vehicle and equipment wash areas plumbed to the sanitary sewer or be self contained and all wastewater/ washwater hauled for legal disposal.

4. Landscape, Park, and Recreational Facilities Management
   (a) Integrated Pest Management (IPM)
   IPM is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties. Each Permittee shall implement an IPM program within 365 days that includes the following:
      (1) Pesticides are used only if monitoring indicates they are needed according to established guidelines.
      (2) Treatments are made with the goal of removing only the target organism.
      (3) Pest controls are selected and applied in a manner that minimizes risks to human health, beneficial, non-target organisms, and the environment.
      (4) Its use of pesticides, including Organophosphates and Pyrethroids do not threaten water quality.
      (5) Partner with other agencies and organizations to encourage the use of IPM.
      (6) Adopt and verifiably implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and encouraging the use of IPM techniques (including beneficial insects) in the Permittees' overall operations and on municipal property.

(7) Policies, procedures, and ordinances shall include commitments and timelines to reduce the use of pesticides that cause impairment of surface waters by implementing the following procedures:
(A) Quantify pesticide use by its staff and hired contractors.
(B) Prepare and annually update an inventory of pesticides used by all internal departments, divisions, and other operational units.
(C) Demonstrate reductions in pesticide use.

(b) Each Permittee shall implement the following requirements no later than November 3, 2009:
(1) Use a standardized protocol for the routine and non-routine application of pesticides (including pre-emergents), and fertilizers.
(2) Ensure no application of pesticides or fertilizers are applied to an area immediately prior to, during, or immediately after a rain event, or when water is flowing off the area.
(3) Ensure that no banned or unregistered pesticides are stored or applied.
(4) Ensure that all staff applying pesticides are certified in the appropriate category by the California Department of Pesticide Regulation, or are under the direct supervision of a pesticide applicator certified in the appropriate category.
(5) Implement procedures to encourage the retention and planting of native vegetation to reduce water, pesticide and fertilizer needs; and
(6) Store pesticides and fertilizers indoors or under cover on paved surfaces or use secondary containment.
(A) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills.
(B) Regularly inspect storage areas.
(7) Comply with the provisions and the monitoring requirements for application of aquatic pesticides to surface waters (WQ Order No. 2004-0008-DWQ).

5. Storm Drain Operation and Management
(a) Catch Basin Cleaning
(1) Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following:
Priority A: Catch basins that are designated as consistently generating the highest volumes of trash.
Priority B: Catch basins that are designated as consistently generating moderate volumes of trash.
Priority C: Catch basins that are designated as generating low volumes of trash.
Within one year of Order adoption, Permittees shall submit a map or list of Catch Basins with their GPS coordinates and their designations. The map or list shall contain the rationale or data to support designations.

(2) Each Permittee shall inspect catch basins according to the following schedule:

Priority A: A minimum of 3 times during the wet season and once during the dry season every year.

Priority B: A minimum of once during the wet season and once during the dry season every year.

Priority C: A minimum of once per year.

Catch basins shall be cleaned as necessary on the basis of inspections. Permittees shall maintain inspection records for Regional Board review.

(3) In addition to the preceding schedule, Permittees shall ensure that any catch basin that is determined to be at least 25% full of trash shall be cleaned out.

(b) Trash Management at Public Events

(1) Each Permittee shall require for any event in the public right of way or wherever it is foreseeable that substantial quantities of trash and litter may be generated, the following measures:

(A) Proper management of trash and litter generated; and

(B) Arrangement for temporary screens to be placed on catch basins; or

(C) Provide clean out of catch basins, trash receptacles, and grounds in the event area within 24 hours subsequent to the event.

(c) Trash Receptacles

(1) Each Permittee shall install trash receptacles, or equivalent trash capturing devices in areas subject to high trash generation within its jurisdiction no later than May 7, 2010.

(2) Each Permittee shall ensure that all trash receptacles are cleaned out and maintained as necessary to prevent trash overflow.

(d) Catch Basin Labels

(1) Each Permittee shall inspect the legibility of the catch basin stencil or label nearest each catch basin and inlet before the wet season begins.

(2) Each Permittee shall record and re-stencil or re-label within 15 days of inspection, catch basins with illegible stencils.

(e) Additional Trash Management Practices

(1) Each Permittee shall install trash excluders, or equivalent devices on or in catch basins or outfalls to prevent the discharge of trash to the storm drain system or receiving water no later than two years after Order adoption date in areas defined as Priority A (Provision 1a(2)) except in sites where the application of such BMP(s) alone will cause flooding. Lack of maintenance that causes flooding is not an acceptable exception to the requirement to install BMPs. Alternatively the Permittee may implement alternative or enhanced BMPs beyond the provisions of this permit (such as but not limited to increased street sweeping, adding trash cans near trash generation sites, prompt enforcement of trash accumulation, increased trash collection on public property, increased litter prevention messages or trash nets within the MS4) that provide substantially equivalent removal of trash. Permittees shall demonstrate that BMPs, which substituted for trash excluders provide equivalent trash removal performance as excluders. When outfall trash

capture is provided, revision of the schedule for inspection and cleanout of catch basins in task (a) may be proposed by the Permittee for approval by the Executive Officer.

(f) Storm Drain Maintenance

(1) Each Permittee shall implement a program for Storm Drain Maintenance no later than November 3, 2009 that includes the following:

(A) Visual monitoring of Permittee-owned open channels and other drainage structures for debris at least annually.

(B) Remove trash and debris from open channel storm drains a minimum of once per year before the wet season.

(C) Eliminate the discharge of contaminants during MS4 maintenance and clean outs.

(D) Quantify the amount of materials removed using techniques appropriate for quantifying solid waste and ensure the materials are properly disposed of.

(g) Spill Response Plan

(1) Each Permittee shall implement a response plan for spills to the MS4 within their respective jurisdiction. The response Plan shall clearly identify agencies responsible and telephone numbers and e-mail address for contact and shall contain at a minimum the following:

(A) Investigation of all complaints received within 24 hours of the incident report.

(B) Response within 2 hours to spills for containment upon notification, except where such overflows occur on private property, in which case the response should be within 2 hours of gaining legal access to the property.

(C) Notification to appropriate public health agencies and the Office of Emergency Services (OES).

(h) Permittee Owned Treatment Control BMPs

(1) Each Permittee shall implement an inspection and maintenance program for all Permittee owned treatment control BMPs, including post-construction treatment control BMPs.

(2) Each Permittee shall ensure proper operation of all treatment control BMPs and maintain them as necessary for proper operation, including all post-construction treatment control BMPs.

(3) Any residual water produced by a treatment control BMP and not being internal to the BMP performance when being maintained shall be:

(A) Hauled away and legally disposed of; or

(B) Applied to the land without runoff; or

(C) Discharged to the sanitary sewer system (with permits or authorization); or

(D) Treated or filtered to remove bacteria, sediments, nutrients, and meet the limitations set in Table 11 (Discharge Limitations for Dewatering Treatment BMPs) prior to discharge to the MS4.

Table 11 - Discharge Limitations for Dewatering Treatment BMPs[1]

Parameter	Units	Limitation
Total Suspended Solids	mg/L	100
Turbidity	NTU	50
Oil and Grease	mg/L	10

6. Streets and Roads Maintenance
   (a) Maintenance
      (1) Each Permittee shall perform street sweeping of curbed streets in commercial areas and areas subject to high trash generation to control trash and debris at least two times per month.
   (b) Road Reconstruction
      (1) Each Permittee shall require that for any project that includes roadbed or street paving, repaving, patching, digouts, or resurfacing roadbed surfaces, that the following BMPs be implemented for each project.
         (A) Restrict paving and repaving activity to exclude periods of rainfall or predicted rainfall[2] unless required by emergency conditions.
         (B) Install sand bags or gravel bags and filter fabric at all susceptible storm drain inlets and at manholes to prevent spills of paving products and tack coat;
         (C) Prevent the discharge of release agents including soybean oil, other oils, or diesel to the storm water drainage system or receiving waters.
         (D) Minimize non storm water runoff from water use for the roller and for evaporative cooling of the asphalt.
         (E) Clean equipment over absorbent pads, drip pans, plastic sheeting or other material to capture all spillage and dispose of properly.
         (F) Collect liquid waste in a container, with a secure lid, for transport to a maintenance facility to be reused, recycled or disposed of properly.
         (G) Collect solid waste by vacuuming or sweeping and securing in an appropriate container for transport to a maintenance facility to be reused, recycled or disposed of properly.
         (H) Cover the "cold-mix" asphalt (i.e., pre-mixed aggregate and asphalt binder) with protective sheeting during a rainstorm.
         (I) Cover loads with tarp before haul-off to a storage site, and do not overload trucks.
         (J) Minimize airborne dust by using water spray during grinding.
         (K) Avoid stockpiling soil, sand, sediment, asphalt material and asphalt grindings materials or rubble in or near storm water drainage system or receiving waters.
         (L) Protect stockpiles with a cover or sediment barriers during a rain.

[1] Technology based effluent limits.
[2] A probability of precipitation (POP) of 50% is required.

7. Emergency Procedures
   (a) Each Permittee may conduct repairs of essential public service systems and infrastructure in emergency situations with a self-waiver of the provisions of this Order.
      (1) Where the self-waiver has been invoked, the Permittee shall submit to the Regional Water Board Executive Officer a statement of the occurrence of the emergency, an explanation of the circumstances, and the measures that were implemented to reduce the threat to water quality, no later than 30 business days after the situation of emergency has passed.
      (2) Minor repairs of essential public service systems and infrastructure in emergency situations (can be completed in less than one day) are not subject to the notification provisions. Appropriate BMPs to reduce the threat to water quality shall be implemented.

8. Municipal Employee and Municipal Contractor Training
   (a) Each Permittee shall, no later than May 7, 2010 and annually thereafter before June 30, train all of their employees and contractors in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program to:
      (1) Promote a clear understanding of the potential for activities to pollute storm water.
      (2) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.
   (b) Each Permittee shall, no later than May 7, 2010 and annually thereafter before June 30, train all of their employees and contractors who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work). Training programs shall address:
      (1) The potential for pesticide-related surface water toxicity.
      (2) Proper use, handling, and disposal of pesticides.
      (3) Least toxic methods of pest prevention and control, including IPM.
      (4) Reduction of pesticide use.
   (c) Each Permittee shall, no later than May 7, 2010 and annually thereafter before June 30, train all of their employees and contractors who are responsible for illicit connections and illicit/ illegal discharges. Training programs shall address:
      (1) Identification
      (2) Investigation
      (3) Termination
      (4) Cleanup
      (5) Reporting of Incidents
      (6) Documentation of Incidents

H. Illicit Connections and Illicit Discharges Elimination Program

I. Each Permittee shall implement an Illicit Connections and Illicit Discharges (IC/ IDs) program to eliminate IC/IDs to the storm drain system, and shall document, track, and report all such cases in accordance with the elements and performance measures specified in the following subsections.

1. General
   (a) Implementation - Each Permittee shall implement an IC/ ID Program. The IC/ ID procedures shall be documented and made available for public review.
   (b) Tracking - All Permittees shall, no later than May 7, 2012, map at a scale and in a format specified by the Principal Permittee all known connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee incidents of illicit connections and discharges since January 2009 on their baseline maps, and shall transmit this information to the Principal Permittee no later than May 7, 2012. Permittees shall use this information to identify priority areas for further investigation and elimination of IC/ ID.

2. Public Reporting
   (a) Permittees shall establish and maintain a phone hotline and internet site to receive all reports of IC/ ID complaints.
   (b) Permittees shall document the location of the reported IC/ ID and the actions undertaken in response to all IC/ ID complaints.

3. Illicit Connections
   (a) Screening for Illicit Connections
      (1) Each Permittee shall submit to the Principal Permittee:
         (A) A map at a scale and in a format specified by the Principal Permittee showing the location and length of underground pipes 18 inches and greater in diameter, and channels within their permitted area and operated by the Permittee in accordance with the following schedule:
            (i) All channeled portions of the storm drain system no later than May 7, 2010.
            (ii) All portions of the storm drain system consisting of storm drain pipes 36 inches in diameter or greater, no later than May 7, 2012. This provision is not meant to exclude Permittees from using equally effective alternative methods not listed in the manual.
            (iii) All portions of the storm drain system consisting of storm drain pipes 18 inches in diameter or greater, no later than May 7, 2014.
         (B) The status of suspected, confirmed, and terminated illicit connections.
      (2) Permittees shall conduct field screening of their storm drain systems in accordance with screening procedures described in the Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development

and Technical Assessments (2004)[1]. Permittees shall conduct field screening of their storm drain system that has not been previously screened and reported to the Regional Board, for illicit connections in accordance with the following schedule:

(A) All portions of the storm drain system consisting of storm drain pipes 36 inches in diameter or greater, no later than May 7, 2012.

(B) High priority areas identified during the mapping of illicit connections and discharges, no later than May 7, 2012.

(C) All portions of storm drain systems 50 years or older in age, no later than May 7, 2012.

(3) Each Permittee shall maintain a list containing all connections under investigation for possible illicit connection and their status.

(b) Response to Illicit Connections

(1) Investigation -
Each Permittee, upon discovery or upon receiving a report of a suspected illicit connection, shall complete an investigation within 21 days, to determine the following:

(A) Source of the connection.

(B) Nature and volume of discharge through the connection.

(C) Responsible party for the connection.

(2) Termination -
Each Permittee, upon confirmation of an illicit storm drain connection, shall ensure the following:

(A) Termination of the connection within 180 days of completion of the investigation, using formal enforcement authority to eliminate the illicit connection.

(3) Documentation -
Each Permittee shall keep records of all illicit connection investigations and the formal enforcement taken to eliminate all illicit connections.

4. Illicit Discharges

(a) Investigation -
Each Permittee shall investigate an illicit/ illegal discharge during or immediately following containment and cleanup activities, and shall take appropriate enforcement action to eliminate the illegal discharge.

(b) Abatement and Cleanup -
Each Permittee shall respond, within 1 business day of discovery or a report of a suspected illicit/ illegal discharge, with actions to abate, contain, and/or clean up all illegal discharges, including hazardous waste.

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[1] *Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development and Technical Assessments*. The Center for Watershed Protection, Pitt R., October 2004. Chapter 13, 13.1,13.2, 13.3, 13.4

(c) Documentation -
Each Permittee shall maintain records of all illicit/ illegal discharge discoveries, reports of suspected illicit/ illegal discharges, their response to the illicit/ illegal discharges and suspected illicit/ illegal discharges, and the formal enforcement taken to eliminate all illicit/ illegal discharges.

I. REPORTING PROGRAM

1. The Principal Permittee in consultation with the Permittees and Regional Water Board staff shall convene an adhoc working group to develop an Electronic Reporting Program, the basis of which shall be the requirements in this Order. The Committee shall no later than May 7, 2010 submit the electronic reporting form in each subsequent year.

2. Each Permittee shall submit information required in the Reporting Program in a method as appropriate to the format approved by the Regional Water Board Executive Officer.

3. The Principal Permittee shall submit by December 15th of each year, an Annual Report to the Regional Water Board Executive Officer in the form one hard copy and three compact disk (CD) copies (or an electronic equivalent).

4. The Annual Report shall document the status of the Municipal Storm Water Program, an integrated summary of the results of analyses from:
(a) The monitoring program described under Part 1- Monitoring Report.
(b) The requirements described under Part 2- Program Report.

5. Plans shall be submitted to the Regional Water Board Executive Officer in the form of one hard copy and three compact disk (CD) copies (or an electronic equivalent).

6. Study Reports shall be submitted to the Regional Water Board Executive Officer in the form of one hard copy and three compact disk (CD) copies (or an electronic equivalent).

7. Progress Reports shall be submitted to the Regional Water Board Executive Officer in the form of one hard copy and three compact disk (CD) copies (or an electronic equivalent).

PART 5 - TOTAL MAXIMUM DAILY LOAD PROVISIONS

I. Part 6 of this Order incorporates provisions to assure that Ventura County MS4 Permittees comply with WLAs and other requirements of TMDLs covering impaired waters impacted by the Permittees' discharges.

II. Each Permittee shall attain the storm water WLAs incorporated into this Order by implementing BMPs in accordance with the TMDL Technical Reports, Implementation Plans, or as identified as a result of TMDL special studies specified in the Basin Plan Amendment.

III. The Permittees shall comply with the following Wasteload Allocations, consistent with the assumptions and requirements of the Wasteload Allocations documented in the Implementation Plans, including compliance schedules, associated with the State adoption and approval of the TMDL at compliance monitoring points established in each TMDL (40CFR122.44(d)(1)(vii)(B).

IV. TMDLs in effect and covered in this Order are the following:

1. TMDL for Nutrients for Malibu Creek Watershed (Effective date: March 21, 2003)
2. TMDL for Nitrogen Compounds and Related Effects in Calleguas Creek (Effective date: July 16, 2003)
3. TMDL for Nitrogen Compounds for the Santa Clara River (Effective date: March 23, 2004).
4. TMDL for Chloride in Santa Clara River, Reach 3 (Effective date: June 18, 2003)
5. TMDL for Chloride in Upper Santa Clara River (Effective date: May 4, 2005)
6. TMDL for Toxicity, Chlorpyrifos and Diazinon in the Calleguas Creek, its Tributaries and Mugu Lagoon - (Effective date: March 24, 2006).
7. TMDL for Organochlorine Pesticides, Polychlorinated Biphenyls, and Siltation in Calleguas Creek, its Tributaries and Mugu Lagoon (Effective date: March 24, 2006).
8. TMDL for Bacteria in Malibu Creek and Lagoon (Effective date: January 24, 2006).
9. TMDL for Metals and Selenium in the Calleguas Creek, its Tributaries and Mugu Lagoon (Effective date: March 26, 2007)
10. TMDL for Trash in Revolon Slough and Beardsley Wash (Effective date: March 6, 2008).
11. TMDL for Boron, Chloride, Sulfate, and TDS in Calleguas Creek Watershed (Effective date: December 2, 2008)
12. TMDL for Trash in the Ventura River Estuary (Effective date: March 6, 2008).
13. TMDL for Bacteria in Harbor Beaches of Ventura County (Effective date: September 23, 2008).

IV. TMDL Interim WLAs incorporated into this Order due to compliance dates which exceed the term of this Order are the following:

1. Final Wet Weather Bacteria WLAs for Malibu Creek and Lagoon – (Compliance date: January 24, 2016).
2. Final Chloride WLAs for Upper Santa Clara River – (Compliance date: May 4, 2016)
3. Final Organochlorine Pesticides, Polychlorinated Biphenyls, and Siltation WLAs for Calleguas Creek, its Tributaries and Mugu Lagoon – (Compliance date: March 24, 2026).
4. Final Metals and Selenium WLAs for Calleguas Creek, its Tributaries and Mugu Lagoon (Compliance date: March 26, 2022)
5. Final Boron, Chloride, Sulfate, and TDS WLAs for Calleguas Creek watershed (Compliance date: December 2, 2023)

V. TMDL WLAs and Other TMDL Provisions Incorporated into this Order are as follows:

1. TMDL for Nutrients for Malibu Creek Watershed

(a) Summer Load Allocations

	Nitrogen (lbs/day)	Phosphorus (lbs/day)
- Runoff from developed areas	26	2.6
- Golf Course Fertilization	37	6.6
- Dry Weather Urban Runoff	52	4.6
- Other	56	4.1

(b) Winter concentration-based Load Allocations

	Nitrogen (Nitrate-N + Nitrite-N) (mg/L)
- Runoff from Developed Areas	8
- Golf Course Fertilization	8
- Dry Weather Urban Runoff	8
- Other	8

(c) Compliance Monitoring:
This TMDL was established and approved by U.S. EPA and did not include an implementation plan.

(d) Actions and Special Studies required for Malibu Creek MS4 permittees
(1) Extent of algal impairment. EPA recommends studies to investigate the current extent of impairment due to excessive algal growth in the creek by surveying algal biomass and species composition at multiple sites within the creek.

(2) Limiting factor analysis. EPA recommends further study to assess whether total nitrogen or total phosphorus or other parameters such as flow and light limit algal growth in the Malibu Creek watershed.
(3) Fate of nutrients in Malibu Lagoon. EPA recommends this special study to determine if the expected upstream reductions in nutrient loadings would result in desired improvements in water quality in the lagoon.

2. TMDL for Nitrogen Compounds and Related Effects in Calleguas Creek Watershed

The stormwater permitted discharges were considered minor sources of nitrogen to the Calleguas Creek. Therefore, WLAs are not assigned to storm water permitted discharges. The monitoring program of this TMDL includes data collection to quantify loadings and associated WLAs from these sources.

3. TMDL for Nitrogen Compounds in the Santa Clara River

(a) Waste Load Allocations:
(1) The Ventura County MS4 permittees discharging to the Santa Clara River (the cities of Fillmore and Santa Paula) ("Santa Clara MS4 permittees") shall implement BMPs to achieve the following MS4 wasteload allocations applicable to River Reach 3:

Ammonia nitrogen 30-day average	2.0 mg/L
Ammonia nitrogen 1-hour average	4.2 mg/L
Nitrate + Nitrite nitrogen 30-day average	8.1 mg/L

(b) Compliance Monitoring:
(1) Compliance with the WLAs is to be determined through receiving water monitoring conducted in accordance with the Santa Clara River Nitrogen TMDL Monitoring Program approved by the Executive Officer.
(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.
(c) Actions and Special Studies required of Santa Clara MS4 permittees:
(1) Annual Progress Reports. Santa Clara River MS4 permittees, either independently or in conjunction with other stakeholders, shall submit an annual progress report with respect to achievement of the WLAs.

4. TMDL for Chloride in Santa Clara River, Reach 3

(a) Waste Load Allocation:
MS4 permittees discharging to Santa Clara River, Reach 3 shall implement BMPs to achieve the following MS4 WLAs:

Chloride (mg/L)	80

(b) Compliance Monitoring: This TMDL was established and approved by U.S. EPA and did not include an implementation plan.
(c) Actions and Special Studies required of Santa Clara MS4 permittees:
(1) Annual Progress Reports. Santa Clara River MS4 permittees, either independently or in conjunction with other stakeholders, shall submit an annual progress report with respect to achievement of the WLAs.

5. TMDL for Chloride in Upper Santa Clara River

(a) Waste Load Allocation:
MS4 permittees discharging to Upper Santa Clara River shall implement BMPs to achieve the following WLAs

Chloride (mg/L)	100

(b) Compliance monitoring:
(1) Compliance with the WLAs is to be determined through receiving water monitoring conducted in accordance with the Santa Clara River Nitrogen TMDL Monitoring Program approved by the Executive Officer.
(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports and Implementation Plans. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.
(c) Actions and Special Studies required of Santa Clara MS4 permittees:
(1) Annual Progress Reports. Santa Clara River MS4 permittees, either independently or in conjunction with other stakeholders, shall submit an annual progress report with respect to achievement of the WLAs.

6. TMDL for Toxicity, Chlorpyrifos, and Diazinon in the Calleguas Creek, its Tributaries and Mugu Lagoon.

(a) Waste Load Allocations:
(1) MS4 permittees discharging to Calleguas Creek, its tributaries and Mugu Lagoon (Ventura County Watershed Protection District, County of Ventura and the cities of Camarillo, Moorpark, Oxnard, Simi Valley and Thousand Oaks) ("Calleguas MS4 permittees") shall implement BMPs to achieve the following MS4 WLAs:

Toxicity WLA	1.0 TUc
Chlorpyrifos WLA	0.014 ug/L
Diazinon WLA	0.10 ug/L

(2) Pursuant to the TMDL, the final storm water WLAs for Toxicity, Chlorpyrifos and Diazinon, listed above, are receiving water concentrations measured in-stream at the base of each subwatershed within the Calleguas Creek watershed.

(b) Compliance Monitoring:

(1) Compliance with the WLAs is to be determined through the measurement of in-stream water quality at the base of each of the Calleguas Creek subwatersheds, in accordance with the Calleguas Creek Watershed TMDL Monitoring Program approved by the Executive Officer.

(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(3) If as a result of compliance monitoring and subsequent investigations it is determined that a Calleguas MS4 permittee is responsible for exceedance of the in-stream Toxicity WLA, that permittee shall initiate the TRE/TIE process as outlined in U.S. EPA's "Understanding and Accounting for Method Variability in Whole Effluent Toxicity Applications Under the National Pollutant Discharge Elimination System Program" (2000) or the approved Toxicity TMDL monitoring plan, and take appropriate action to eliminate the identified source of the toxicity.

(c) Actions and Special Studies required of Calleguas MS4 permittees:

(1) Special Study #1. Together with Calleguas POTW permittees, investigate the pesticides that will replace diazinon and chlorpyrifos in the urban environment, their potential impact on receiving waters and potential control measures. Special Study #1 was completed by March 24, 2008.

(2) Special Study #2. Together with Calleguas Agricultural Dischargers, consider results of monitoring of sediment concentrations by source/land use type through the special study required in the Calleguas OC Pesticide, PCB and Siltation TMDL Implementation Plan. Complete within 6 months of completion of the OCs TMDL special study #1.

(3) Pesticide Collection Program. Together with Calleguas POTW permittees, develop and implement a collection program for diazinon and chlorpyrifos and an educational program. Collection and education could occur through existing programs such as household hazardous waste collection events. The Pesticide Collection Program is to be implemented by March 24, 2009.

(4) Special Study #3. Together with Calleguas Agricultural Dischargers, consider the findings of transport rates developed through the OC Pesticide, PCB and Siltation TMDL Implementation Plan. Complete within 6 months of completion of the OCs TMDL special study #1.

7. TMDL for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs) and Siltation in the Calleguas Creek, its Tributaries and Mugu Lagoon.

(a) Waste Load Allocations:

(1) MS4 permittees discharging to Calleguas Creek, its tributaries or Mugu Lagoon (Ventura County Watershed Protection District, County of Ventura and the cities of Camarillo, Moorpark, and Simi Valley) ("Calleguas MS4 permittees") shall implement BMPs to achieve the interim WLAs listed in Table 12.

Table 12 - Interim Sediment Concentration WLAs (ng/g)

Constituent	Subwatershed					
	Mugu Lagoon	Calleguas Creek	Revolon Slough	Arroyo Las Posas	Arroyo Simi	Conejo Creek
Chlordane	25	17	48	3.3	3.3	3.4
4,4-DDD	69	66	400	290	140	5.3
4,4-DDE	300	470	1600	950	170	20
4.4-DDT	39	110	690	670	25	2
Dieldrin	19	3	5.7	1.1	1.1	3
PCBs	180	3800	7600	25700	25700	3800
Toxaphene	22900	260	790	230	230	260

(2) Pursuant to the TMDL, the interim storm water WLAs for OC Pesticides, PCBs and Siltation, listed above, are annual average, sediment-based concentrations measured in surface waters at the base of each subwatershed within the Calleguas Creek watershed.

(b) Compliance Monitoring:

(1) Compliance with the WLAs is to be determined through the measurement of in-stream water quality at the base of each of the Calleguas Creek subwatersheds, in accordance with the Calleguas Creek Watershed TMDL Monitoring Program approved by the Executive Officer.

(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(c) Actions and Special Studies required of Calleguas MS4 permittees:

(1) Pesticide Collection Program. Together with Calleguas POTW permittees, implement a collection program and source control measures pursuant to a work plan approved by the Executive Officer. The Pesticide Collection Program is to be implemented by March 24, 2011.

(2) Special Study #1. Together with Calleguas POTW permittees, Calleguas Agricultural Dischargers, and the Point Mugu Naval Base, submit a work plan to quantify sedimentation in the Calleguas Creek Watershed, evaluate management methods to control siltation and contaminated sediment transport to Calleguas Creek, identify appropriate BMPs to reduce sediment loadings and evaluate the effect of sediment on habitat preservation in Mugu Lagoon for approval by the Executive Officer. This special study is also to evaluate the concentration of OC pesticides and PCBs in sediments from

various sources/land use types. Special Study #1 is to be completed by March 24, 2014.

(3) Special Study #2. Together with Calleguas Agricultural Dischargers, identify areas of high OC concentrations and evaluate the effects of watershed protection and land use practices on water quality. Such practices include but are not limited to management of sediment reduction practices and structures, streambank stabilization, and other projects related to stormwater conveyance and flood control improvements in the Calleguas Creek watershed. Special Study #2 is to be completed based on the schedule provided in the workplan, submitted in March, 2007

(4) Special Study #3 – Together with Calleguas POTW permittees, Calleguas Agricultural Dischargers, and the Point Mugu Naval Base, evaluate natural attenuation rates and evaluate methods to accelerate organochlorine pesticide and polychlorinated biphenyl attenuation and examine the attainability of wasteload and load allocations in the Calleguas Creek Watershed. Special Study #3 is to be completed by March 24, 2016.

8. TMDL for Metals and Selenium in the Calleguas Creek, its Tributaries and Mugu Lagoon.

(a) Waste Load Allocations:

(1) MS4 permittees discharging to Calleguas Creek, its tributaries or Mugu Lagoon (Ventura County Watershed Protection District, County of Ventura and the cities of Camarillo, Moorpark, Oxnard, Simi Valley and Thousand Oaks) ("Calleguas MS4 permittees") shall implement BMPs to achieve the interim WLAs listed in Table 13 and Table 14.

Table 13 - Interim WLAs for Copper, Nickel and Selenium (ug/L)

Constituent	Calleguas and Conejo Creek (a)			Revolon Slough		
	Dry Daily Maximum (ug/L)	Dry Monthly Average (ug/L)	Daily Maximum (ug/L)	Dry Daily Maximum (ug/L)	Dry Monthly Average (ug/L	Daily Maximum (ug/L)
Copper	23	19	204	23	19	204
Nickel	15	13	(a)	15	13	(a)
Selenium	(b)	(b)	(b)	14(c)	13(c)	(a)

(A) The current loads do not exceed the TMDL under wet conditions, interim limits are not required

(B) Selenium allocations have not been developed for this reach as it is not on the 303(d) list

(C) Attainment of interim limits will be evaluated in consideration of background loading data, if available

(2) Pursuant to the TMDL, the interim storm water WLAs for copper, nickel, and selenium are receiving water concentrations measured in-stream at the base of Calleguas Creek and Revolon Slough and in Mugu Lagoon.

Table 14 - Mass-based WLAs for copper, nickel and selenium

Annual Cumulative Flow (million gallons per year)	Calleguas Creek (lbs/yr)	Revolon Slough (lbs/yr)
0-15,000	3.3	1.7
15,000-25,000	10.5	4
Above 25,000	64.6	10.2

(3) Pursuant to the TMDL, the interim storm water WLAs for mercury are suspended sediment loads measured in-stream at the base of Calleguas Creek and Revolon Slough and in Mugu Lagoon.

(4) Determination of the applicable interim WLA will be determined by calculating the total annual flow (October 1-September 30) in the Calleguas Creek watershed as measured by the flow gage at CSUCI.

(b) Compliance Monitoring:

(1) Compliance with the WLAs is to be determined through the measurement of in-stream water quality and total suspended solids (TSS) at the base of Calleguas Creek, Revolon Slough and in Mugu Lagoon, in accordance with the Calleguas Creek Watershed TMDL Monitoring Program approved by the Executive Officer.

(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(c) Actions and Special Studies required of Calleguas MS4 permittees:

(1) Conduct a source control study, develop and submit an Urban Water Quality Management Program (UWQMP) for copper, mercury, nickel, and selenium. Complete by March 26, 2009.

(2) Implement the UWQMP within one year of approval by Executive Officer.

(3) In cooperation with agricultural dischargers, evaluate the results of the OCs TMDL special study on sediment transport rates for applicability to the metals and selenium TMDL. Complete within 6 months of completion of the OCs TMDL special study #1.

(4) In cooperation with agricultural dischargers, include monitoring for copper, mercury, nickel and selenium in the OC pesticides TMDL special study – Monitoring of Sediment by Source and Land Use Type. The special study is to be completed by March 26, 2014.

(5) Evaluate the results of the OC Pesticides TMDL Special Study – Effects of BMPs on Sediment and Siltation, to determine the impacts on metals and selenium. Complete within 6 months of completion of the OC Pesticides special study #1.

(6) Evaluate the effectiveness of BMPs implemented under the UWQMP in controlling metals and selenium discharges. This is to be completed by March 26, 2013.

(7) Re-evaluate agricultural and urban waste load allocations for copper, mercury, nickel and selenium based on the evaluation of BMP effectiveness. By March 26, 2012, urban dischargers will have a required 25% reduction in the difference between the loadings at the time of the TMDL preparation and the final WLAs effective in 2022.

(8) In cooperation with POTW permittees and agricultural dischargers, conduct a study to identify selenium contaminated groundwater sources. Special Study is to be completed within one year of the approval of the workplan.

(9) In cooperation with agricultural dischargers, conduct a study to investigate metals "hot spots" and natural soils concentrations. This special study is to be completed within 2 years of the approval of the workplan.

9. TMDL for Bacteria in Malibu Creek and Lagoon

(a) Waste Load Allocations:

(1) MS4 permittees discharging to Malibu Creek or its tributaries (Ventura County Watershed Protection District, County of Ventura and the cities of Thousand Oaks and Simi Valley) ("Malibu MS4 permittees") shall achieve the WLAs identified in Resolution 2004-19. . These WLAs are expressed as the number of daily or weekly sample days that may exceed the single sample limits or 30-day geometric mean bacteria targets in Resolution 2004-19.

Table 15 - Bacteria Targets

Parameters	Unit	Fresh Water Targets	
		Geometric Mean	Single Sample
E. coli	mg	126/ 100	235/ 100
Fecal coliform	mg	200/ 100	400/ 100

(2) The wasteload allocations are to be achieved no later than January 26, 2012.

(b) Compliance Monitoring:

(1) Achievement of the WLAs is to be determined through receiving water monitoring conducted in accordance with the Santa Monica Bacteria TMDL Compliance Monitoring Program approved by the Executive Officer.

(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(c) Actions and Special Studies required of Malibu MS4 permittees:
(1) If TMDL compliance monitoring indicates that the Malibu MS4 permittees are causing or contributing to an exceedance of the WLAs in the receiving waters, the permittees shall conduct a source identification study and implement additional controls sufficient to achieve the WLAs in the receiving waters.

10. TMDL for Trash in Revolon Slough and Beardsley Wash
(a) Wasteload Allocations
(1) MS4 permittees discharging to Revolon Slough and Beardsley Wash (Ventura County Watershed Protection District, County of Ventura and the cities of Camarillo and Oxnard) shall implement BMPs to achieve the WLAs of zero trash.
(b) Compliance Monitoring
(1) Responsible jurisdictions will develop a TMRP for Executive Officer approval that describes the methodologies that will be used to assess and monitor trash in Revolon Slough and Beardsley Wash and/or within responsible jurisdiction land areas. The TMRP shall include a plan to establish the trash Baseline WLAs.
(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.
(c) Actions and Special Studies required of Revolon Slough and Beardsley Wash MS4 permittees
(1) Per the adopted Basin Plan Amendment, compliance with the TMDL may be either through a progressive implementation schedule of full capture devices or implementation of other measures to attain the required trash reduction.

11. TMDL for Trash in the Ventura River Estuary
(a) Wasteload Allocations
(1) MS4 permittees discharging to the Ventura River Estuary (Ventura County Watershed Protection District, County of Ventura and the City of Ventura) shall implement BMPs to achieve the WLAs of zero trash.
(b) Compliance Monitoring
(1) Responsible jurisdictions will develop a TMRP for Executive Officer approval that describes the methodologies that will be used to assess and monitor trash in the Ventura River Estuary and/or within responsible jurisdiction land areas. The TMRP shall include a plan to establish the trash Baseline WLAs.

(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(c) Actions and Special Studies required of Revolon Slough and Beardsley Wash MS4 permittees

(1) Per the adopted Basin Plan Amendment, compliance with the TMDL may be either through a progressive implementation schedule of full capture devices or implementation of other measures to attain the required trash reduction.

12. TMDL for Boron, Chloride, Sulfate and TDS in Calleguas Creek Watershed

(a) Waste Load Allocation

Table 16 - Interim Dry Weather WLAs for Permitted Stormwater Dischargers

Constituent	Interim Limit 30-day average (mg/L)
Boron Total	1.3
Chloride Total	230
Sulfate Total	1289
TDS Total	1720

Table 17 - Final Dry Weather WLAs for Permitted Stormwater Dischargers

Subwatershed	Critical Condition Flow Rate (mgd)	Chloride Allocation (lb/day)	TDS Allocation (lb/day)	Sulfate Allocation (lb/day)	Boron Allocation (lb/day)
Simi	1.39	1,738	9,849	2,897	12
Las Posas	0.13	157	887	261	N/A
Conejo	1.26	1,576	8,931	2,627	N/A
Camarillo	0.06	72	406	119	N/A
Pleasant Valley (Calleguas)	0.12	150	850	250	N/A
Pleasant Valley (Revolon)	0.25	314	1,778	523	2

(b) Compliance Monitoring

(1) A monitoring plan will be submitted to the RWQCB for Executive Officer approval on June 2, 2009. Monitoring will begin one year after Executive Officer approval of the monitoring plan to allow time for the installation of automated monitoring equipment.

(2) Compliance with the WLAs is to be determined through the measurement of in-stream water quality at the base of each of the Calleguas Creek subwatersheds, in accordance with the Calleguas Creek Watershed TMDL Monitoring Program approved by the Executive Officer.

(3) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(c) Actions and Special Studies required of Calleguas Creek Watershed MS4 permittees

Responsible jurisdictions including MS4 permittees shall submit compliance monitoring plan to the Los Angeles Regional Board for Executive Officer approval on June 2, 2009. Monitoring shall begin monitoring as outlined in the approved monitoring plan six months after approval of the work plan.

Responsible jurisdictions including MS4 permittees shall demonstrate that implementation actions have reduced the boron, sulfate, TDS, and chloride imbalance by 20%, 40%, 70% by December 2 of 2011, 2015, and 2018 respectively. Stormwater dischargers shall achieve WLAs, which shall be expressed as NPDES mass-based limits specified in accordance with federal regulations and state policy on water quality control by December 2, 2023.

13. TMDL for Bacteria in Harbor Beaches of Ventura County

(a) Waste Load Allocations

(1) MS4 permittees discharging to the Channel Islands Harbor Beaches (the County of Ventura, the Ventura County Watershed Protection District (VCWPD) and associated Municipal Separate Storm Sewer System (MS4) permittees in the Channel Islands Harbor subwatershed, and the City of Oxnard shall implement BMPs to achieve the interim WLAs listed in Table 15. All WLAs for summer dry-weather single sample bacteria densities at the Harbor Beaches of Ventura County are zero (0) days of allowable exceedances; winter dry weather and wet weather final WLAs are listed in Table 17 below.

The Basin Plan objectives that serve as the numeric targets for this TMDL are (single sample limits):

a. Total coliform density shall not exceed 10,000/100 ml.
b. Fecal coliform density shall not exceed 400/100 ml.
c. Enterococcus density shall not exceed 104/100 ml.
d. Total coliform density shall not exceed 1,000/100ml, if the ratio of fecal-to-total coliform exceeds 0.1.

Table 18 - Interim WLAs for Single Sample Exceedance Days

Location	Summer Dry Weather		Winter Dry Weather		Wet Weather	
	Daily Sampling	Weekly Sampling	Daily Sampling	Weekly Sampling	Daily Sampling	Weekly Sampling
Kiddie Beach	54	8	23	4	32	5
Hobie Beach	40	6	25	4	38	6

Table 19 - Final Allowable Exceedance Days by Location

Location	Summer Dry-weather		Winter Dry-weather		Wet-weather	
	Daily Sampling	Weekly Sampling	Daily Sampling	Weekly Sampling	Daily Sampling	Weekly Sampling
Hobie Beach	0	0	3	1	17	3
Kiddie Beach	0	0	3	1	17	3

(2) Pursuant to the TMDL, the interim storm water WLAs for bacteria are from samples taken at existing monitoring sites in ankle to knee- high depths.

(b) Compliance Monitoring

(1) Compliance and monitoring for Harbor Beaches of Ventura County is based on existing monitoring protocols and locations. Monitoring shall continue at sampling locations (VCEHD 36000 and VCEHD37000) and at the current weekly monitoring frequency, consistent with AB411 compliance monitoring. Monitoring shall be conducted on a year-round basis at the current monitoring locations including the summer months (i.e., April to October) and winter months (i.e., November to March). Bacteria sampling shall be conducted in ankle- to knee-high water, consistent with AB411. However, if additional monitoring stations are added or if changes are made to the sampling frequencies or existing monitoring locations, then submittal of a monitoring plan is required for Executive Officer approval.

(2) If any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports, Implementation Plans or as identified as a result of TMDL special studies identified in the Basin Plan Amendment. Following these actions, Regional Water Board staff will evaluate the need for enforcement action.

(c) Actions and Special Studies required of Harbor Beaches of Ventura County MS4 permittees

(1) Per the adopted Basin Plan Amendment, compliance with the TMDL may be either through structural and non-structural BMPs or implementation of other measures to attain the required source control.
(2) Special studies are not required for implementation of the TMDL though conducting special studies is within the discretion of the responsible parties.

PART 6 - DEFINITIONS

The following are definitions for terms in this Order:

Adverse Impact - means a detrimental effect upon water quality or beneficial uses caused by a discharge or loading of a pollutant or pollutants.

Agriculture - means the science, art, and business of cultivating the soil, producing crops, and raising livestock.

Antidegradation Policies - means policies which protect surface and ground waters from degradation, and federal policies, which protect high quality surface waters. In particular, this policy protects waterbodies where existing quality is higher than that necessary for the protection of beneficial uses including the protection of fish and wildlife propagation and recreation on and in the water (*Statement of Policy with Respect to Maintaining High Quality Water in California*, State Board Resolution No. 68-16; 40 CRF 131.12).

Applicable Standards and Limitations - means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and pretreatment standards under § 301, § 302, § 303, § 304, § 306, § 307, § 308, § 403, and § 404 of CWA.

Areas of Special Biological Significance (ASBS) - means all those areas of this state listed as ASBS, listed specifically within the California Ocean Plan or so designated by the State Board which, among other areas, includes the area from Mugu Lagoon to Latigo Point: Oceanwater within a line originating from Laguna Point at 34° 5' 40" north, 119° 6'30" west, thence southeasterly following the mean high tideline to a point at Latigo Point defined by the intersection of the mean high tide line and a line extending due south of Benchmark 24; thence due south to a distance of 1000 feet offshore or to the 100 foot isobath, whichever distance is greater; thence northwesterly following the 100 foot isobath or maintaining a 1,000-foot distance from shore, whichever maintains the greater distance from shore, to a point lying due south of Laguna Point, thence due north to Laguna Point.

Authorized Discharge - means any discharge that is authorized pursuant to an NPDES permit, waste discharge requirement, conditional waiver from waste discharge requirements, or meets the conditions set forth in this Order.

Automotive Repair Shop - means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.

Automotive Service Facilities - means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) codes. For inspection purposes, Permittees need not inspect facilities with SIC codes 5013, 5014, 5541, 5511, provided that these facilities have no outside activities or materials that may be exposed to storm water.

SIC Code	Corresponding NAICS Code
5013	425120, 441310, 425110, & 423120
5014	425120, 425110, 423130, & 441320
5511	441110
5541	447110, & 447190
7532	811121
7533	811112
7534	326212, & 811198
7536	811122
7537	811113
7538	811111
7539	811198, & 811118

Bacteria Total Maximum Daily Load (TMDL) Dry Weather - defined in the Bacteria TMDLs as those days with less than 0.1 inch of rainfall and those days occurring more than 3 days after a rain.

Bacteria Total Maximum Daily Load (TMDL) Wet Weather - defined in the Bacteria TMDLs as a day with 0.1 inch or more of rain and 3 days following the rain event.

Basin Plan - means the Water Quality Control Plan, Los Angeles Region, Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties, adopted by the Regional Water Board on June 13, 1994 and subsequent amendments.

Beneficial Uses - means the existing or potential uses of receiving waters in the permit area as designated by the Regional Water Board in the Basin Plan.

Best Management Practices (BMPs) - means methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges including storm water. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

California Environmental Quality Act (CEQA) - means a California statute that requires state and local agencies to identify significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible (Reference: California Public Resources Code § 21000 et seq.)

Channel - means an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two waterbodies.

Chronic Toxicity - means a measurement of a sublethal effect (e.g., reduced growth, reproduction) to experimental test organisms exposed to an effluent or ambient waters compared to that of the control organisms.

Commercial Area(s) - means any geographic area of the Permittees' jurisdiction that is not heavy industrial or residential. A commercial area includes, but is not limited to areas surrounding: commercial activity, hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

Commercial Development - means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.

Construction - Construction activity includes any construction or demolition activity, clearing, grading, grubbing, or excavation or any other activity that results in a land disturbance. Construction does not include emergency construction activities required to immediately protect public health and safety or routine maintenance activities required to maintain the integrity of structures by performing minor repair and restoration work, maintain original line and grade, hydraulic capacity, or original purpose of the facility. See "Routine Maintenance" definition for further explanation. Where clearing, grading or excavating of underlying soil takes place during a repaving operation, State General Construction Permit coverage is required if more than one acre is disturbed or the activities are part of a larger plan.

Construction Activities Storm Water General Permit (CASGP) - means the general NPDES permit adopted by the State Board, which authorizes the discharge of storm water from construction activities under certain conditions.

Control - means to minimize, reduce, eliminate, or prohibit by technological, legal, contractual or other means, the discharge of pollutants from an activity or activities.

Critical Sources - means commercial facilities and businesses that have a potential to contribute pollutants to stormwater runoff if effective BMPs are not implemented. Attachment "D" specifies the commercial facilities and businesses that have been identified as Critical Sources.

Dechlorinated/ Debrominated Swimming Pool Discharge - means any swimming pool discharge with a residual chlorine or bromine level of 0.1mg/L or less; and does not contain any detergents, wastes, algaecides, or cyanuric acid in excess of 50 ppm, or any other chemicals including salts from pools commonly referred to as "salt water pools". The term does not include swimming pool filter backwash or swimming pool water containing bacteria.

Development - means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project (whether single-family, multi-unit or planned unit development); industrial, commercial, retail and any other non-residential projects, including public agency projects; or mass grading for future construction.

Directly Adjacent - means situated within 200 feet of the contiguous zone required for the continued maintenance, function, and structural stability of the environmentally sensitive area.

Directly Discharging - means outflow from a drainage conveyance system that is composed entirely or predominately of flows from the subject, property, development, subdivision, or industrial facility and not commingled with the flows from adjacent lands.

Discharge - means when used without qualification the "discharge of a pollutant."

Discharging Directly - means outflow from a drainage conveyance system that is composed entirely or predominantly of flows from the subject, property, development, subdivision, or industrial facility, and not commingled with the flows from adjacent lands.

Discharge of a Pollutant - means any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source" or, any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft, which is being used as a means of transportation. The term discharge includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

Disturbed Area - means any area that is altered as a result of land disturbance. Examples include but are not limited to: clearing, grading, grubbing, stockpiling and/ or excavation, etc...

Dry Day - means a non-wet day for Malibu Creek and Lagoon Bacteria TMDL WLA. A wet day is defined as a day with a 0.1 inch or more of rain and 3 days following the rain event is a non-wet day for Bacteria TMDL WLA.

Effect Concentration (EC) is a point estimate of the toxicant concentration that would cause an observable adverse effect (e.g., death, immobilization, or serious incapacitation) in a given percent of the test organisms, calculated from a continuous model (e.g., Probit Model). EC_{25} is a point estimate of the toxicant concentration that would cause an observable adverse effect in 25 percent of the test organisms.

Effective Impervious Surface - means that portion of the surface area that is hydrologically connected via sheet flow over a hardened conveyance or impervious surface without any intervening medium to mitigate flow volume.

Effluent limitation - means any restriction imposed by the Permitting Authority (PA) on quantities, discharge rates, concentrations, and/ or mass loadings of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

Emergency - means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage. (Reference: California Public Resources Code § 21060.3. Emergency).

End-of-Pipe - means the end of the major outfall as defined in 40 CFR122.26 (b)(5) and 40 CFR122.26 (b)(6).

Endpoint - means a biological measurement used to quantify the results obtained from analytical methods such as whole effluent toxicity testing [e.g., lethal concentration (LC_{50}); inhibition concentration (IC_{25}); and no observed effect concentration (NOEC)]. Such endpoints are quantitative measurements of the responses of test organisms (e.g., survival, growth, mobility, reproduction, and weight gain or loss) in response to exposure to a serial dilution of effluent.

Environment - means the physical conditions, which exist within the area and which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

Environmentally Sensitive Area (ESA) - means an area "in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would be easily disturbed or degraded by human activities and developments" (Reference: California Public Resources Code § 30107.5). ESAs will include Clean Water Act 303d Listed Water Bodies in all reaches that are unimproved, all California Coastal Commission's Environmentally Sensitive Habitat Areas as delineated on maps in Local Coastal Plans and Regional Water Quality Control Board's Basin Plan Rare, Threatened or Endangered Species (RARE) and Preservation of Biological Habitats (BIOL) designated waterbodies. The California Department of Fish and Game's Significant Natural Areas map will

be considered for inclusion as the department field verifies the designated locations. Watershed restoration projects will be considered for inclusion as the department field verifies the designated locations.

Erosivity Factor - The Erosivity Factor is a criterion that to assess the risk of erosion on disturbed land. It is described in "Predicting soil erosion by water: A guide to conservation planning with the Revised Universal Soil Loss Equation (RUSLE), Agricultural Handbook 703, USDA-ARS, U.S. Government Printing Office, Washington, D.C., 1997 by Renard, K.C., G.R. Foster, G.A. Weesies, D.K. McCool, and D.C. Yoder.

Federal Clean Water Act (CWA) - means (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92—500, as amended by Public Law 95—217, Public Law 95—576, Public Law 96—483 and Public Law 77—117, codified at 33 U.S.C. 1251 et seq.

First Storm Event - means the first storm event of the wet season that produces at least 0.25 inches of rain.

Forest Land - means land at least 10 percent stocked with live trees, or land that had this minimum tree stocking in the past and is not currently developed for nonforest use. The minimum area recognized is 1 acre.

Groundwater Dewatering - means the active practice of removing standing water from soil excavations using a pump(s) or other means.

Hillside - means property located in an area with known erosive soil conditions, where the development will result in grading on any slope that is 20% or greater or an area designated by the Municipality under a General Plan or ordinance as a "hillside area".

Horse Stables - means a property where at least one horse is stabled at least part of the year.

Hydromodification - means the alteration away from a natural state of stream flows or the beds or banks of rivers, streams, or creeks, including ephemeral washes, which results in hydrogeomorphic changes.

Illegal Discharge - means any discharge to the municipal separate storm sewer (storm drain system) that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illegal discharge includes all non-storm water discharges not composed entirely of storm water except discharges pursuant to an NPDES permit, discharges that are identified in part 1, "Discharge Prohibitions" of this order, or discharges authorized by the Regional Water Board Executive Officer.

Illicit Connection - means any engineered conveyance that is connected to the storm drain system without a permit or municipal authorization. It also means any engineered conveyance through which discharges of pollutants to the separate storm drainage systems, which are not composed entirely of storm water or are not authorized by an NPDES permit, may occur.

Illicit Discharge - means any discharge to a municipal separate storm sewer (storm drain system) that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-storm water discharges not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges that are identified in part 1, "Discharge Prohibitions" of this order, or authorized by the Regional Water Board Executive Officer.

Illicit Disposal - means any disposal, either intentionally or unintentionally, of material(s) or waste(s) that can pollute storm water.

Industrial/ Commercial Facility - means any facility involved and/ or used in the production, manufacture, storage, transportation, distribution, exchange or sale of goods and/ or commodities, and any facility involved and/ or used in providing professional and non-professional services. This category of facilities includes, but is not limited to, any facility defined by either the Standard Industrial Classifications (SIC) or the North American Industry Classification System (NAICS). Facility ownership (federal, state, municipal, private) and profit motive of the facility are not factors in this definition.

Industrial Activities Storm Water General Permit (IASGP) - means the general NPDES permit adopted by the State Board, which authorizes the discharge of storm water from certain industrial activities under certain conditions.

Industrial Park - means a land development that is set aside for industrial development. Industrial parks are usually located close to transport facilities, especially where more than one transport modalities coincide: highways, railroads, airports, and navigable rivers. It includes office parks, which have offices and light industry.

Inhibition Concentration (IC) - means a point estimate of the toxicant concentration that would cause a given percent reduction in a non-lethal biological measurement (e.g., reproduction or growth), calculated from a continuous model (i.e., Interpolation Method). IC25 is a point estimate of the toxic concentration that would cause a 25-percent reduction in a non-lethal biological measurement.

Inspection - means entry and the conduct of an on-site review of a facility and its operations, at reasonable times, to determine compliance with specific municipal or other legal requirements. The steps involved in performing an inspection, include, but are not limited to:

1. Pre-inspection documentation research
2. Request for entry
3. Interview of facility personnel

4. Facility walk-through
5. Visual observation of the condition of facility premises
6. Examination and copying of records as required
7. Sample collection (if necessary or required)
8. Exit conference (to discuss preliminary evaluation)
9. Report preparation, and if appropriate, recommendations for coming into compliance

Integrated Pest Management (IPM) - means a sustainable approach to managing pests by combining biological, cultural, physical and chemical tools in a way that minimizes economic, health, and environmental risks.

Large Municipal Separate Storm Sewer System (MS4) - means all MS4s that serve a population greater than 250,000 (1990 Census) as defined in 40 CFR122.26 (b)(4). The Regional Water Board designated Ventura County as a large MS4 in 1990, based on: (i) the U.S. Census Bureau 1990 population count of 669,016 thousand, and (ii) the interconnectivity of the MS4s in the incorporated and unincorporated areas within the County.

Local SWPPP - means the Local Storm Water Pollution Prevention Plan (LSWPPP) required by the local agency for a project that disturbs one or more acres of land. Shall mean a plan identifying potential pollutant sources from a construction site and describing proposed design, placement and implementation of BMPs, to effectively prevent non-storm water discharges and reduce pollutants in storm water discharges to the storm drain system, during construction activities. Also referred as a Storm Water Pollution Control Plan (SWPCP).

Low Impact Development (LID) – means a design strategy with the goal of maintaining or replicating the pre-development hydrologic regime through the use of design techniques to create a functionally equivalent hydrologic site design. Hydrologic functions of storage, infiltration and ground water recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and distributed micro-scale storm water retention and detention areas, reduction of impervious surfaces, and the lengthening of runoff flow paths and flow time. Other strategies include the preservation/protection of environmentally sensitive site features such as riparian buffers, wetlands, steep slopes, valuable (mature) trees, flood plains, woodlands, and highly permeable soils.

Major Municipal Separate Storm Sewer Outfall ("or major outfall") - means a major municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more), as defined in 40 CFR122.26 (b)(5).

Major Outfall - means a major municipal separate storm sewer outfall, as defined in 40 CFR122.26 (b)(6).

Maximum Extent Practicable (MEP) – The technology-based permit requirement established by Congress in CWA section 402(p)(3)(B)(iii) that municipal dischargers of storm water must meet. Technology-based requirements, including MEP, establish a level of pollutant control that is derived from available technology or other controls. MEP requires municipal dischargers to perform at maximum level that is practicable. Compliance with MEP may be achieved by emphasizing pollution prevention and source control BMPs in combination with structural and treatment methods where appropriate. The MEP approach is an ever evolving and advancing concept, which considers technical and economic feasibility.

Method Detection Limit (MDL) - means the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero, as defined in 40 CFR136, Appendix "G" of this Order.

Minimum Level (ML) - means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method specified sample weights, volumes, and processing steps have been followed. The ML value represents the lowest quantifiable concentration in a sample based on the proper application of all method-based analytical procedures and the absence of any matrix interferences. Assuming that all method-specific analytical steps are followed, the ML value will also represent, after the appropriate application of method-specific factors, the lowest standard in the calibration curve for that specific analytical technique.

Minimum Significant Difference (MSD) - means a measure of test sensitivity that establishes the minimum difference required between a control and a test treatment in order for that difference to be considered statistically significant.

Municipal Separate Storm Sewer System (MS4) - means a conveyance or system of conveyances (including roads w/ drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains), as defined in 40 CFR122.26(b)(8):

1. Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Federal Clean Water Act (CWA) that discharges into waters of the United States
2. Designed or used for collecting or conveying storm water
3. Which is not a combined sewer
4. Which is not part of a Publicly Owned Treatment Works (POTW), as defined in 40 CFR122.2

NAICS - means North American Industry Classification System.

National Pollutant Discharge Elimination System (NPDES) - means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA § 307, 402, 318, and 405.

Natural Drainage Systems - means unlined or unimproved (not engineered) creeks, streams, rivers or similar waterways.

New Development - means land disturbing activities; structural development, including construction or installation of a building or structure, creation and replacement of impervious surfaces; and land subdivision.

Non-Storm Water Discharge - means any discharge to a storm drain that is not composed entirely of storm water.

No Observed Effect Concentration (NOEC) - means the highest tested concentration of an effluent or toxicant that causes no observable adverse effect on the test organisms (i.e., the highest concentration of toxicant at which the values for the observed responses are not statistically different from the controls).

Nuisance - means anything that meets all of the following requirements: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; (3) occurs during, or as a result of, the treatment or disposal of wastes.

Nursery - means NAICS classification to describe nursery operations and determine the type of operations covered under this Order and those covered under the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Waiver).

1. There are 3 broad NAICS sectors available to classify nurseries:
   (1) 111xxx - Crop Production - Agriculture
   (a) 424xxx - Merchant Wholesalers, Nondurable Goods
   (b) 44xxxx - Retail Trade
      (1) **Nursery (Agricultural Facilities - Crop Production)** - means Nursery and Floriculture Production under NAICS Code 11142x. These operations are subject to the **Conditional Waiver**. This industry comprises establishments primarily engaged in (1) growing nursery and floriculture products (e.g., nursery stock, shrubbery, cut flowers, flower seeds, foliage plants, sod) under cover or in open fields and/ or (2) growing short rotation woody trees with a growing and harvesting cycle of 10 years or less for pulp or tree stock (e.g., cut Christmas trees, cottonwoods).

(2) **Nursery (Commercial Facilities - Merchant Wholesalers, Nondurable Goods, and Retail Trade)** - means industries Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers under NAICS Code 424930; and Nursery, Garden Center, and Farm Supply Stores under NAICS Code 444220. This Order covers these types of operations. The industry in NAICS Code 424930 comprises establishments primarily engaged in the merchant wholesale distribution of flowers, florists' supplies, and/ or nursery stock (except plant seeds and plant bulbs). The industry in NAICS Code 444220 comprises establishments primarily engaged in retailing nursery and garden products, such as trees, shrubs, plants, seeds, bulbs, floriculture products and sod, which are predominantly grown elsewhere. These establishments may sell a limited amount of a product they grow themselves.

Open Channel - means a storm drainage channel that is not a natural water course.

Parking Lot - means land area or facility for the parking or storage of motor vehicles used for businesses, commerce, industry, or personal use.

Percent Minimum Significant Difference (PMSD) - means the minimum significant difference divided by the control mean, expressed as a percent (see minimum significant difference).

Permit - means an authorization, license, or equivalent control document issued by U.S. EPA or an "approved State" to implement the requirements of 40 CFR Parts 122, 123, and 124. "Permit" includes an NPDES "general permit" (§ 122.28). Permit does not include any permit, which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

Permittee(s) - means co-permittee(s) and any agency named in this Order as being responsible for permit conditions within its jurisdiction, as defined by Federal Regulation. Permittees to this Order include the Ventura Water Protection District, Ventura County, and the cities of Camarillo, Fillmore, Moorpark, Ojai, Oxnard, Port Hueneme, San Buenaventura, Santa Paula, Simi Valley and Thousand Oaks.

Point Source - means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

Point Zero - means in the context of the TMDLs, the point at which water from the storm drain or creek initially mixes with water. Point zero has been selected as the compliance point for the TMDL numeric target because access to these drains is, on the whole, not restricted.

Pollutants - means those "pollutants" defined in CWA § 502(6) (33.U.S.C.§ 1362(6)), and incorporated by reference into California Water Code § 13373.

Pollutants of Concern - means constituents that have exceeded Basin Plan Objectives, and CTR- Chronic or Acute Objectives during monitoring at Mass Emission, Receiving Water, and Land Use stations.

Potable Water Sources - means the potable water system for the treatment, distribution, and provision of water for residential, commercial, industrial, or institutional use that meets all California safe drinking water regulatory standards for human consumption.

Pre-Developed Condition - means native vegetation and soils that existed at a site prior to first development. The pre-developed condition may be assumed to be an area with the typical vegetation, soil, and storm water runoff characteristics of open space areas in coastal Southern California unless reasonable historic information is provided that the area was atypical.

Priority Pollutants - means those constituents referred to in 40 CFR401.15 and listed in the U.S. EPA NPDES Application Form 2C, pp. V-3 through V-9.

Project - means all development, redevelopment, and land disturbing activities. The term is not limited to "Project" as defined under CEQA (Reference: California Public Resources Code § 21065).

Qualified SWPPP Developer or Qualified SWPPP Practitioner – refer to State of California General Construction Stormwater Permit for definition.

Rare, Threatened, or Endangered Species (RARE) - means a beneficial use for waterbodies in the Los Angeles Region, as designated in the Basin Plan (Table 2-1), that supports habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered.

Redevelopment - means land-disturbing activity that results in the creation, addition, or replacement of 5,000 square feet or more of impervious surface area on an already developed site. Redevelopment includes, but is not limited to: the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety.

Regional Administrator - means the Regional Administrator of the Regional Office of the U.S. EPA or the authorized representative of the Regional Administrator.

Report of Waste Discharge (ROWD) - means an application for renewal of the NPDES Permit for Waste Discharge Requirements for Municipal Separate Storm Sewer Discharges Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein.

Restaurant - means a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC Code 5812).

Restoration - means the reestablishment of predisturbance aquatic functions and related physical, chemical and biological characteristics (Reference: National Research Council. 1992. Restoration of Aquatic Ecosystems: Science, Technology and Public Policy. National Academy Press, Washington, D.C.).

Retail Gasoline Outlet (RGO) - means any facility engaged in selling gasoline and lubricating oils- SIC 5541 and NAICS 447110 & 447190.

1. RGOs: 447190 Other Gasoline Stations:
   This industry comprises establishments known as gasoline stations (except those with convenience stores) primarily engaged in one of the following: (1) retailing automotive fuels (e.g., diesel fuel, gasohol, gasoline) or (2) retailing these fuels in combination with activities, such as providing repair services; selling automotive oils, replacement parts, and accessories; and/ or providing food services.
2. RGOs: 447110 Gasoline Stations with Convenience Stores:
   Retailing automotive fuels in combination with a convenience store or food mart.

Routine Maintenance – Routine maintenance projects include, but are not limited to projects conducted to:

1. Maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
2. Perform as needed restoration work to preserve the original design grade, integrity and hydraulic capacity of flood control facilities.
3. Includes road shoulder work, regrading dirt or gravel roadways and shoulders and performing ditch cleanouts.
4. Update existing lines* and facilities to comply with applicable codes, standards, and regulations regardless if such projects result in increased capacity.
5. Repair leaks

Routine maintenance does not include construction of new** lines or facilities resulting from compliance with applicable codes, standards and regulations.

* Update existing lines includes replacing existing lines with new materials or pipes.

** New lines are those that are not associated with existing facilities and are not part of a project to update or replace existing lines.

Screening - means using proactive methods to identify illicit connections through a continuously narrowing process. The methods may include: performing baseline monitoring of open channels, conducting special investigations using a prioritization approach, analyzing maintenance records for catch basin and storm drain cleaning and operation, and verifying all permitted connections into the storm drains. Special investigation techniques may include: dye testing, visual inspection, smoke testing, flow monitoring, infrared, aerial and thermal photography, and remote control camera operation.

Sidewalk Rinsing - means only sidewalk rinsing using high pressure and low volume of water with no additives and at an average usage of 0.006 gallons per square foot of surface area to be rinsed. Any waste generated from the activity must be collected and properly and legally disposed of. It does not mean hosing of any sidewalk or street with a garden hose with a pressure nozzle.

Site - means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

Small Construction - means any soil disturbing activities less than 5 acres.

Smart Growth - development in or near cities intended to lessen or reverse suburban sprawl, decrease the use of automobiles, and shorten daily travel. It uses compact building design to cluster together residential, shopping, and work areas and encourages walking and public transportation. Smart Growth is considered a stormwater BMP in the 2005 publication *Using Smart Growth Techniques as Stormwater Best Management Practices*, EPA 231-B-05-002.

Source Control BMP - means any schedules of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent storm water pollution by reducing the potential for contamination at the source of pollution.

Southern California Stormwater Monitoring Coalition (SMC) - means the Stormwater Monitoring Coalition, which is a collaborative research/ monitoring partnership of the Southern California Water Boards, Municipal Storm Water Agencies, and municipalities to develop the methodologies and assessment tools to more effectively understand urban storm water and non-storm water (anthropogenic) impacts to receiving waters and to conduct research/ monitoring through Subsequent Research Implementation Agreements. The first original cooperative agreement was entered into on February 8, 2001.

Stream - means a body of flowing water; natural water course containing water at least part of the year. In hydrology, it is generally applied to the water flowing in a natural channel as distinct from a canal (Reference: US Geological Survey).

Strip Mall - means a commercial development that is a shopping center where the stores are arranged in a row, with a sidewalk in front. Strip malls are typically developed as a unit and have large parking lots in front. They face major traffic arterials and tend to be self-contained with few pedestrian connections to surrounding neighborhoods. It is also called a plaza.

Storm Event Monitoring - means a rainfall event that produces more than 0.25 inch of precipitation and is separated from the previous storm event by at least 1 week of dry weather, for the purpose of monitoring.

Storm Water - means storm water runoff, snow melt runoff, and surface runoff and drainage, as defined in 40 CFR122.26(b)(13).

Storm Water Discharge Associated with Industrial Activity - means industrial discharge, as defined in 40 CFR122.26(b)(14).

Storm Water Quality Management Program - means the Ventura Countywide Storm Water Quality Management Plan, which includes descriptions of programs, collectively developed by the Permittees in accordance with provisions of the NPDES Permit, to comply with applicable federal and state law, as the same is amended from time to time.

Structural BMP - means any structural facility designed and constructed to mitigate the adverse impacts of storm water runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

Summer Dry Weather - means dry weather days occurring from April 1 through October 31 of each year.

t-Test (formally Student's t-test) - means a statistical analysis comparing two sets of replicate observations, in the case of WET, only two test concentrations (e.g., a control and 100% effluent). The purpose of this test is to determine if the means of the two sets of observations are different [e.g., if the 100% effluent concentration differs from the control (i.e., the test pass or fails)].

Targeted Employees - means management and staff who perform or direct activities that directly or indirectly have an effect of storm water quality. The employees generally are employed in the following areas: department of public works, engineering, sanitation, storm water maintenance, drainage and flood control, transportation, streets and roads, parks and recreation, public landscaping and corporation yards, planning or community development, code enforcement, building and safety, harbor or port departments, airports, or general services and fleet services.

Total Maximum Daily Load (TMDL) - means the sum of the individual waste load allocations for point sources and load allocations for nonpoint sources and natural background.

Toxicity Identification Evaluation (TIE) - means a set of procedures to identify the specific chemical(s) responsible for toxicity through a process of chemical/ physical manipulations of samples followed by toxicity tests. These procedures are performed in 3 phases (Phase I- Toxicity Characterization Procedure, Phase II- Toxicity Identification Procedure, and Phase III- Toxicity Confirmation Procedure) using aquatic organism toxicity tests.

Toxicity Reduction Evaluation (TRE) - means a study conducted in a step-wise process to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity.

Toxicity Test - means a procedure using living organisms to determine whether a chemical or an effluent is toxic. A toxicity test measures the degree of the effect of a specific chemical or effluent on exposed test organisms.

Toxic Unit (TU) - means a measure of toxicity in an effluent as determined by the acute toxicity units (TUa) or chronic toxicity units (TUc) measured. The larger the TU, the greater the toxicity.

Toxic Unit - Chronic (TUc) - means 100 times the reciprocal of the effluent concentration that causes no observable effect on the test organisms in a chronic toxicity test (TUc = 100/NOEC or 100/EC25) (see NOEC).

Treatment - means the application of engineered systems that use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to, filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and UV radiation.

Treatment Control BMP - means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media absorption or any other physical, biological, or chemical process.

Urbanization - means the process of changing of land use and land patterns from rural characteristics to urban (city-like) characteristics. These changes include (i) the replacement of pervious surfaces with impervious surfaces such as rooftops and buildings, and impervious materials such as asphalt and concrete; and (ii) the conversion of rural land to house new residents, support new businesses, and facilitate vehicular traffic flow.

U.S. EPA Phase I Facilities - means facilities in specified industrial categories that are required to obtain an NPDES permit for storm water discharges, as required by 40 CFR122.26(c). These categories include:

1. Facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR N)
2. Manufacturing facilities
3. Oil and gas/ mining facilities
4. Hazardous waste treatment, storage, or disposal facilities
5. Landfills, land application sites, and open dumps
6. Recycling facilities
7. Steam electric power generating facilities
8. Transportation facilities
9. Sewage of wastewater treatment works
10. Light manufacturing facilities

Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards - means any Permittee owned or operated facility or portion thereof that:

1. Conducts industrial activity, operates or stores equipment or materials, and provides services similar to Federal Phase I facilities;
2. Performs fleet vehicle service/ maintenance including repair, maintenance, washing, or fueling;
3. Performs maintenance and/ or repair of machinery/ equipment; or
4. Stores chemicals, raw materials, or waste materials.

Waste Load Allocations (WLAs) - means a portion of a receiving water's Total Maximum Daily Pollutant Load (TMDL) that is allocated to one of its existing or future point sources of pollution (Reference: 40 CFR130.2(h)).

Water Quality Objectives - means water quality criteria contained in the Basin Plan, the California Ocean Plan, the National Toxics Rule, the California Toxics Rule, and other state or federally approved surface water quality plans. Such plans are used by the Regional Water Board to regulate all discharges, including storm water discharges.

Water Quality Standards - means the State Water Quality Standards, which are comprised of beneficial uses, water quality objectives and the State's Antidegradation Policy.

Waters of the State - means any surface water or groundwater, including saline waters, within boundaries of the state (Reference: California Water Code § 13050).

Waters of the United States or Waters of the US - means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds where the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
   a. Which are or could be used by interstate or foreign travelers for recreational or other purposes
   b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
   c. Which are used or could be used for industrial purposes by industries in interstate commerce
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in the preceding paragraph (1) through (4) of this definition;
6. The territorial sea; and

7. "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in the preceding paragraph (1) through (6) of this definition. (Reference: 33 CFR328)

Watercourse - means any natural or artificial channel for passage of water, including the VCFCD jurisdictional channels included in the List of Channels within the Comprehensive Plan of the VCFCD, as approved by the Board of Supervisors of the VCFCD on October 4, 1993, and any amendments thereto.

Watershed Management - means approach for water resources protection. It is a strategy for integrating and managing resources, both human and fiscal that focuses on regulation of point sources, to a more regional approach that acknowledges environmental impacts from other activities.

Watershed Management Areas (WMA) - means the geographically-defined watershed areas where the Regional Water Board will implement the watershed approach. These generally involve a single large watershed within which exists smaller subwatersheds but in some cases may be an area that does not meet the strict hydrologic definition of a watershed e.g., several small Ventura coastal waterbodies in the region are grouped together into one WMA.

Wet Season - means the calendar period beginning October 1 through April 15.

Winter Dry Weather - means dry weather days occurring from November 1 - March 31 of each year.

Whole Effluent Toxicity - means the aggregate toxic effect of an effluent measured directly by a toxicity test.

PART 7 - STANDARD PROVISIONS

A. General Requirements

1. The Permittee shall comply with all provisions and requirements of this Order.

2. Should the Permittee discover that it failed to submit any relevant facts or that it submitted incorrect information in a report it shall promptly submit the missing or correct information.

3. The Permittee shall report all instances of non-compliance not otherwise reported at the time monitoring reports are submitted.

4. This Order includes Attachment "H", the Reporting Program, which is a part of this Order and must be complied with.

B. Regional Water Board Review

1. The Regional Water Board may review any formal determinate or approval made by the Regional Water Board Executive Officer pursuant to the provisions of this Order.
   (a) Permittee(s) or a member of the public may request such review upon petition within 30 day of the effective date of the notification of such decision to the Permittee(s) and interested parties on file at the Regional Water Board.

C. Public Review

1. All documents submitted to the Regional Water Board in compliance with the terms and conditions of this Order shall be made available to members of the public pursuant to the Freedom of Information Act (5 U.S.C. § 552), as amended, and the Public Records Act (California Government Code § 6250 et seq.).

2. All documents submitted to the Regional Water Board Executive Officer for approval shall be made available to the public for a 30-day period to allow for public comment.

D. Duty to Comply [40 CFR122.41(a)]

1. Each Permittee must comply with all of the terms, requirements, and conditions of this Order. Any violation of this order constitutes a violation of the Clean Water Act, its regulations and the California Water Code, and is grounds for enforcement action, Order termination, Order revocation and reissuance, denial of an application for reissuance, or a combination thereof [40 CFR122.41(a), CAL. WATER CODE § 13261, 13263, 13265, 13268, 13300, 13301, 13304, 13340, 13350].
2. A copy of these waste discharge specifications shall be maintained by each Permittee so as to be available during normal business hours to Permittee employees and members of the public.

3. Any discharge of wastes at any point(s) other than specifically described in this Order is prohibited, and constitutes a violation of the Order.

E. Duty to Mitigate [40 CFR122.41 (d)]

1. Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

F. Inspection and Entry; Investigations; Responsibilities [40 CFR122.41(i), Cal. Water Code § 13225 and § 13267]

1. The Regional Water Board, U.S. EPA, and other authorized representatives shall be allowed:
   (a) Entry upon premises where a regulated facility is located or conducted, or where records are kept under conditions of this Order;
   (b) Access to copy any records, at reasonable times that are kept under the conditions of this Order;
   (c) To inspect at reasonable times any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order;
   (d) To photograph, sample, and monitor at reasonable times for the purpose of assuring compliance with this Order, or as otherwise authorized by the CWA and the CAL. WATER CODE;
   (e) To review any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement to investigate the quality of any waters of the state within its region; and,
   (f) To require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water.

G. Proper Operation and Maintenance [40 CFR122.41 (e), Cal. Water Code § 13263(f)]

1. The Permittees shall at all times properly operate and maintain all facilities and systems of treatment (and related appurtenances) that are installed or used by the Permittees to achieve compliance with this Order. Proper operation and maintenance includes:
   (a) adequate laboratory controls; and
   (b) appropriate quality assurance procedures.
2. This provision requires the operation of backup or auxiliary facilities or similar system that are installed by a Permittee only when necessary to achieve compliance with the conditions of this Order.

H. Signatory Requirements [40 CFR122.41(k) & 122.22]

1. Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Water Board shall be signed by the City Manager or Mayor, or authorized designee and certified as set forth in 40 CFR122.22.

I. Reopener and Modification [40 CFR122.41(f) & 122.62]

1. This Order may only be modified, revoked, or reissued, prior to the expiration date, by the Regional Water Board, in accordance with the procedural requirements of the CAL. WATER CODE and CCR Title 23 for the issuance of waste discharge requirements, 40 CFR122.62, and upon prior notice and hearing, to:
   (a) Address changed conditions identified in the required reports or other sources deemed significant by the Regional Water Board;
   (b) Incorporate applicable requirements or statewide water quality control plans adopted by the State Board or amendments to the Basin Plan, including TMDLs;
   (c) Comply with any applicable requirements, guidelines, and/ or regulations issued or approved pursuant to CWA § 402(p); and/ or,
   (d) Consider any other federal, or state laws or regulations that became effective after adoption of this Order.

2. After notice and opportunity for a hearing, this Order may be terminated or modified for cause, including, but not limited to:
   (a) Violation of any term or condition contained in this Order;
   (b) Obtaining this Order by misrepresentation, or failure to disclose all relevant facts; or,
   (c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

3. The filing of a request by the Principal Permittee or Permittees for a modification, revocation and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

4. This Order may be modified to make corrections or allowances for changes in the permitted activity listed in this section, following the procedures at 40 CFR122.63, if processed as a minor modification. Minor modifications may only:
   (a) Correct typographical errors; or
   (b) Require more frequent monitoring or reporting by the Permittee.

J. Severability

1. The provisions of this Order are severable; and if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected.

K. Duty to Provide Information [40 CFR122.41(h)]

1. The Permittees shall furnish, within a reasonable time, any information the Regional Water Board or U.S. EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order.

2. The Permittees shall also furnish to the Regional Water Board, upon request, copies of records required to be kept by this Order.

L. Twenty-Four Hour Reporting [40 CFR122.41(l)(6)][1]

1. The Permittees shall report to the Regional Water Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. The Regional Water Board may waive the required written report on a case-by-case basis.

M. Bypass [40 CFR122.41(m)][2]

1. Bypass (the intentional diversion of waste streams from any portion of a treatment facility) is prohibited. The Regional Water Board may take enforcement action against Permittees for bypass unless:
   (a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. (Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.);

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[1] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Ventura County SMP are exceeded, and which endanger public health or the environment.
[2] This provision applies to the operation and maintenance of storm water controls and BMPs as provided in this Order or in the Ventura County SMP.

(b) There were no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that could occur during normal periods of equipment downtime or preventive maintenance;
(c) The Permittee submitted a notice at least ten days in advance of the need for a bypass to the Regional Water Board; or,
(d) Permittees may allow a bypass to occur that does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. In such a case, the above bypass conditions are not applicable. The Permittee shall submit notice of an unanticipated bypass as required.

N. Upset [40 CFR122.41(n)][1]

1. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. A Permittee that wishes to establish the affirmative defense of an upset in an action brought for non compliance shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
   (a) An upset occurred and that the Permittee can identify the cause(s) of the upset;
   (b) The permitted facility was being properly operated by the time of the upset;
   (c) The Permittee submitted notice of the upset as required; and,
   (d) The Permittee complied with any remedial measures required.
3. No determination made before an action for noncompliance, such as during administrative review of claims that non-compliance was caused by an upset, is final administrative action subject to judicial review.

4. In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

O. Property Rights [40 CFR122.41(g)]

1. This Order does not convey any property rights of any sort, or any exclusive privilege.

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[1] This provision applies to incidents where effluent limitations (numerical or narrative) as provided in this Order or in the Ventura County SMP are exceeded, and which endanger public health or the environment.

P. Enforcement

1. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The CWA provides the following:
   (a) Criminal Penalties for:
      (1) Negligent Violations [CWA 309 (c)(1)(B)]:
      The CWA provides that any person who negligently violates permit conditions implementing CWA § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $2,500 nor more than $25,000 per day for each violation, or by imprisonment for not more than 1 year, or both.
      (2) Knowing Violations [CWA 309 (c)(2)(B)]:
      The CWA provides that any person who knowingly violates permit conditions implementing CWA § 301, 302, 306, 307, 308, 318, or 405 is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.
      (3) Knowing Endangerment [CWA 309 (c)(3)(A)]:
      The CWA provides that any person who knowingly violates permit conditions implementing CWA § 301, 302, 307, 308, 318, or 405 and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.
      (4) False Statement [CWA 309 (c)(4)]:
      The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.
   (b) Civil Penalties [[CWA 309 (d)]
   The CWA provides that any person who violates a permit condition implementing CWA § 301, 302, 306, 307, 308, 318, or 405 is subject to a civil penalty not to exceed $27,500 per day for each violation.

2. Violation of any of the provisions of the NPDES permit or any of the provisions of this Order may subject the violator to any of the penalties described herein, or any combination thereof, at the discretion of the prosecuting authority; except that only one kind of penalties may be applied for each kind of violation. The Cal Water Code §13885 provides the following:
   (a) Any person who violates any of the following shall be liable civilly in accordance with this section:
      (1) Section 13375 or 13376.
      (2) Any waste discharge requirements or dredged or fillmaterial permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.
      (3) Any requirements established pursuant to Section 13383.
      (4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.
      (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.
      (6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

Q. Need to Halt or Reduce Activity not a Defense [40 CFR122.41(c)]

1. It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

R. Termination of Board Order

1. Regional Water Board Order No. 00-108 is hereby terminated.

S. Board Order Expiration Date

1. This Order expires on May 7, 2014. The Permittees must submit a Report of Waste Discharge (ROWD) and a proposed Storm Water Quality Management Program in accordance with CCR Title 23 as application for reissuance of waste discharge requirements no later than 180 days in advance of such date.

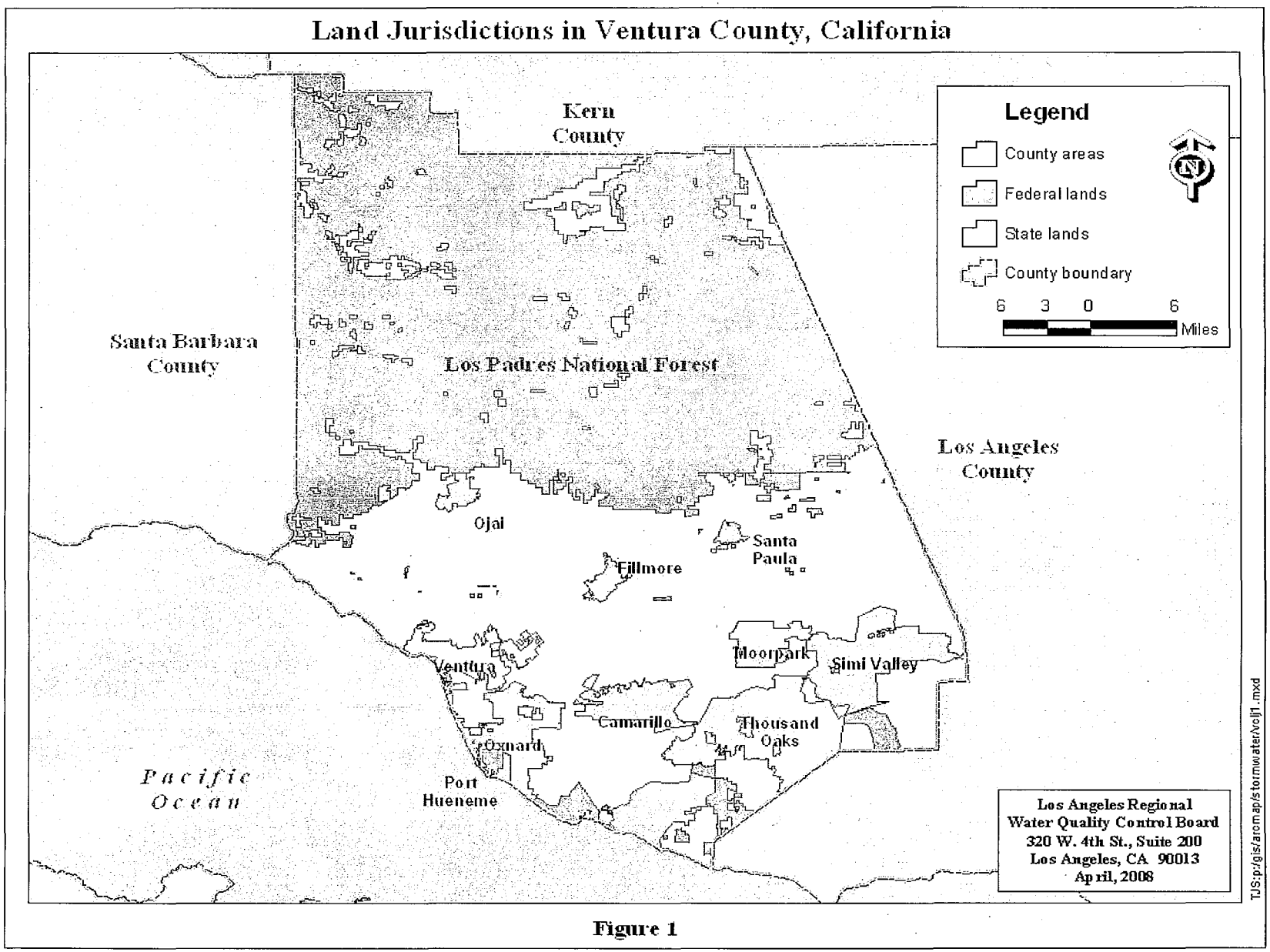
T. MS4 Annual Reporting Program [40 CFR122.42(c)]

1. The Annual Program Reporting shall include the following information:
   (a) *Municipal separate storm sewer systems.*
   The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under 40 CFR122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:
   (1) The status of implementing the components of the storm water management program that are established as permit conditions;
   (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with 40 CFR122.26(d)(2)(iii) of this part;
   (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 40 CFR122.26(d)(2)(iv) and (d)(2)(v) of this part;
   (4) A summary of data, including monitoring data that is accumulated throughout the reporting year;
   (5) Annual expenditures and budget for year following each annual report;
   (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
   (7) Identification of water quality improvements or degradation.

I, Tracy J. Egoscue, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Los Angeles Region, on May 7, 2009.

Chief Deputy E.O. for

Tracy J. Egoscue
Executive Officer


Land Jurisdictions in Ventura County, California
Kern County
Santa Barbara County
Los Padres National Forest
Los Angeles County
Ojai
Santa Paula
Fillmore
Moorpark
Simi Valley
Ventura
Camarillo
Thousand Oaks
Oxnard
Port Hueneme
Pacific Ocean
Legend
County areas
Federal lands
State lands
County boundary
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Miles
Los Angeles Regional Water Quality Control Board
320 W. 4th St., Suite 200
Los Angeles, CA 90013
April, 2008
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Figure 1

ATTACHMENT A
Watershed Management Areas

Watershed Management Area	Hydrologic Units(s)	Major Surface Water Bodies	303(d) Pollutant(s) of Concern	Permittees
Ventura River	402.10 402.20 402.31 402.32	Ventura River Ventura River Estuary Canada Larga Matilija Creek Matilija Creek Reservoir San Antonio Creek	Algae Coliform (fecal, total) Eutrophic Low DO Nitrogen Trash	City of Ojai City of San Buenaventura Ventura County Watershed Protection District
Santa Clara River	403.11 403.21 403.22 403.31 403.32 403.41 403.42 403.43 403.44 403.51 403.52 403.53 403.54 403.55	Santa Clara River Santa Clara River Estuary Brown Barranca/Long Canyon Elizabeth Lake Hopper Creek Lake Hughes Mint Canyon Creek Munz Lake Piru Creek Pole Creek Sespe Creek Torrey Canyon Creek Wheeler Canyon/Todd Barranca	Algae Ammonia ChemA* (tissue) Chloride Coliform Enrichment Eutrophic Fish kills Low DO/Organic Enrichment Nitrate + Nitrite Odors pH Sulfate Trash Total Dissolved Solids Toxaphene	City of Fillmore City of Oxnard City of San Buenaventura City of Santa Paula Ventura County Watershed Protection District

ATTACHMENT A
Watershed Management Areas

Watershed Management Area	Hydrologic Units(s)	Major Surface Water Bodies	303(d) Pollutant(s) of Concern	Permittees
Calleguas Creek	403.11 403.12 403.61 403.62 403.63 403.64 403.67 403.66 403.68	Calleguas Creek Calleguas Creek Estuary Arroyo Conejo Arroyo Las Posas Arroyo Simi Beardsley Channel Conejo Creek Fox Barranca Mugu Lagoon Mugu Drain/Oxnard Drain Rio de Santa Clara/Oxnard Drain Revolon Slough Tapo Canyon	Algae Ammonia Boron ChemA* (tissue) Chlordane (tissue, sediment) Chloride Chlorpyrifos (tissue) Coliform, fecal Copper (total, dissolved) Dacthal (sediment) DDT (tissue, sediment) Dieldrin (tissue) Endosulfan (tissue, sediment) Hexachlorocyclohexane (tissue) Mercury Nickel Nitrate + Nitrite Nitrate as Nitrogen (NO3) Nitrogen Organophosphorus Pesticides PCBs (tissue) Sediment Toxicity Sedimentation/Siltation Selenium Sulfate Total Dissolved Solids Toxaphene (tissue, sediment) Toxicity Trash Zinc	City of Camarillo City of Moorpark City of Oxnard City of Simi Valley City of Thousand Oaks Ventura County Watershed Protection District

ATTACHMENT A
Watershed Management Areas

Watershed Management Area	Hydrologic Units(s)	Major Surface Water Bodies	303(d) Pollutant(s) of Concern	Permittees
Malibu Creek	401.00 403.11 404.21 404.22 404.23 404.24 404.25 404.26 404.47 404.45	Malibu Creek Malibu Creek Lagoon Lake Lindero Lake Sherwood Las Virgenes Creek Linero Creek Malibou Lake Medea Creek Palo Comado Santa Monica Bay Westlake Lake Triunfo Creek	Algae Ammonia Coliform DDT (tissue, sediment) Enteric viruses Eutrophic Lead Low DO/Organic Enrichment Nutrients (algae) PAHs (sediment) PCBs (tissue, sediment) PH Mercury Scum/foam Sedimentation/Siltation Sediment Toxicity Selenium Specific Conductance Trash	City of Simi Valley City of Thousand Oaks Ventura County Watershed Protection District

ATTACHMENT A
Watershed Management Areas

Watershed Management Area	Hydrologic Units(s)	Major Surface Water Bodies	303(d) Pollutant(s) of Concern	Permittees
Miscellaneous Ventura Coastal	401.00 403.11	Channel Islands Harbor Channel Islands Beach Hobie Beach Mandalay Beach McGrath Lake McGrath Beach Ormond Beach Port Hueneme Harbor Promenade Park Beach Rincon Beach San Buenaventura Beach Santa Clara River Estuary Beach/Surfers Knoll Ventura Harbor: Ventura Keys	Beach closures Coliform (fecal) Chlordane (sediment) DDT (tissue, sediment) Dieldrin (sediment) PCBs (tissue, sediment) Lead (sediment) Sediment Toxicity Zinc (sediment)	City of Oxnard City of Port Hueneme City of San Buenaventura Ventura County Watershed Protection District

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ATTACHMENT B

Calleguas Creek Watershed Pollutants of Concern (2003 through 2007)[1]

Mass Emission (ME-CC), Receiving Water (W-3 & W-4), and Land Use (A-1) Sites

Wet Weather	
Bacteriological	
E. Coli	
Fecal Coliform	
Conventional	
Residual Chlorine	
TDS	
Metal	
Aluminum - Total	Chromium - Total
Barium -Total	Cooper - Dissolved
Beryllium - Total	Mercury - Total
Cadmium - Total	Nickel - Total
Nutrient	
Nitrate as Nitrogen	
Organic	
Benzo(a)anthracene	
Benzo(a)pyrene	
Benzo(b)fluoranthene	
Benzo(k)fluoranthene	
Bis(2-ethylhexyl)phthalate	
Chrysene	
Dibenz(a,h)anthracene	
Hexachlorobenzene	
Indeno(1,2,3-cd)pyrene	
Pentachlorophenol	
Pesticide	
4,4'-DDD	
4,4'-DDE	

[1] Mass Emission, Receiving Water, and Land Use wet weather monitoring data was compared to Basin Plan Objectives and CTR-Acute Objectives, to obtain exceedences (Pollutants of Concern). Monitoring data is from the Ventura Countywide NPDES Stormwater Monitoring Program Water Quality Monitoring Reports (2003/04 through 2006/07), data for 2000/01 through 2002/03 was either presented with exceedences not analyzed or by percent exceedence, so data could not be compared to 2003/04 through 2006/07 exceedence data. See definitions for Pollutants of Concern

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ATTACHMENT B

Santa Clara River Watershed Pollutants of Concern (2003 through 2007)[1]

Mass Emission (ME-SCR) and Land Use (I-2 & R-1) Sites

Wet Weather	
Anion	
Chloride	
Bacteriological	
E. Coli	
Fecal Coliform	
Conventional	
Ph	
TDS	
Metal	
Aluminum - Total	Cooper - Dissolved
Arsenic - Total	Mercury - Total
Barium - Total	Nickel - Total
Cadmium - Total	Selenium - Total
Chromium - Total	Zinc - Dissolved
Organic	
Benzo(a)anthracene	
Benzo(a)pyrene	
Benzo(b)fluoranthene	
Benzo(k)fluoranthene	
Bis(2-ethylhexyl)phthalate	
Chrysene	
Dibenz(a,h)anthracene	
Indeno(1,2,3-cd)pyrene	
Pesticide	
4,4'-DDE	

[1] Mass Emission and Land Use wet weather monitoring data was compared to Basin Plan Objectives and CTR-Acute Objectives, to obtain exceedences (Pollutants of Concern). Monitoring data is from the Ventura Countywide NPDES Stormwater Monitoring Program Water Quality Monitoring Reports (2003/04 through 2006/07), data for 2000/01 through 2002/03 was either presented with exceedences not analyzed or by percent exceedence, so data could not be compared to 2003/04 through 2006/07 exceedence data. See definitions for Pollutants of Concern.

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ATTACHMENT B

Ventura River Watershed Pollutants of Concern (2003 through 2007)[1]

Mass Emission (ME- VR & ME- VR2) Sites

Wet Weather
Anion
Chloride
Bacteriological
E. Coli
Fecal Coliform
Conventional
TDS
Metal
Aluminum -Total
Cadmium - Total
Chromium - Total
Mercury - Total
Nickel - Total
Zinc - Dissolved
Organic
Benzo(a)pyrene
Benzo(b)fluoranthene
Bis(2-ethylhexyl)phthalate
Chrysene
Hexachlorobenzene
Pesticide
4,4'-DDD
4,4'-DDE

[1] Mass Emission wet weather monitoring data was compared to Basin Plan Objectives and CTR-Acute Objectives, to obtain exceedences (Pollutants of Concern). Monitoring data is from the Ventura Countywide NPDES Stormwater Monitoring Program Water Quality Monitoring Reports (2003/04 through 2006/07). Monitoring data for 2000/01 through 2002/03 was either presented with exceedences not analyzed or by percent exceedence, so data could not be compared to 2003/04 through 2006/07 exceedence data. See definitions for Pollutants of Concern.

ATTACHMENT C
Treatment BMP Performance Standards

Table 1 - Effluent Concentrations as Median Values

BMP Category	Total Suspended Solids mg/L	Total Nitrate-Nitrogen mg/L	Total Copper, ug/L	Total Lead, ug/L	Total Zinc, ug/L
Detention Pond	27	0.48	15.9	14.6	58.7
Wet Pond	10	0.2	5.8	3.4	21.6
Wetland Basin	13	0.13	3.3	2.5	29.2
Biofilter	18	0.36	9.6	5.4	27.9
Media Filter	11	0.66	7.6	2.6	32.2
Hydrodynamic Device	23	0.29	11.8	5	75.1

Expected BMP pollutant removal performance for effluent quality was developed from the WERF-ASCE/ U.S. EPA International BMP Database, 2007.

See subpart 4.A.3 (Storm Water Quality Management Program Implementation- General Requirements).

ATTACHMENT D
Critical Sources Categories[1]

Municipal Landfills (SIC 4953)

Hazardous Waste Treatment, Disposal and Recovery Facilities[1]

Facilities Subject to SARA Title III (also known as EPCRA)[2]

Restaurants[3]

Wholesale trade (scrap, auto dismantling) (SIC 50)

Automotive service facilities[2]

Fabricated metal products (SIC 34)

Motor freight (SIC 42)

Chemical/allied products (SIC 28)

Automotive Dealers/Gas Stations (SIC 55)

Primary Metals Products (SIC 33)

Nursery[3] (NAICS 424930 and 444220)

Electric/Gas/Sanitary (SIC 49)

Air Transportation (SIC 45)

Water Transportation (SIC 44)

Rubbers/Miscellaneous Plastics (SIC 30)

Local/Suburban Transit (SIC 41)

Railroad Transportation (SIC 40)

Oil & Gas Extraction (SIC 13)

Lumber/Wood Products (SIC 24)

Machinery Manufacturing (SIC 35)

Transportation Equipment (SIC 37)

[1] Non-underlined categories belong to Industrial Facilities.
[2] Various categories subject to these requirements.
[3] See Definition in Part 7. of the Order.

ATTACHMENT D
Critical Sources Categories[1]

Stone, Clay, Glass, Concrete (SIC 32)

Leather/Leather Products (SIC 31)

Miscellaneous Manufacturing (SIC 39)

Food and kindred Products (SIC 20)

Mining of Nonmetallic Minerals (SIC 14)

Printing and Publishing (SIC 27)

Electric/Electronic (SIC 36)

Paper and Allied Products (SIC 26)

Furniture and Fixtures (SIC 25)

Laundries *(SIC 72)*

Instruments (SIC 38)

Textile Mills Products (SIC 22)

Apparel (SIC 23)

[1] Non-underlined categories belong to Industrial Facilities.

ATTACHMENT E
Determination of Erosion Potential

E_p is determined as follows- The *total effective work* done on the channel boundary is derived and used as a metric to predict the likelihood of channel adjustment given watershed and stream hydrologic and geomorphic variables. The index under urbanized conditions is compared to the index under pre-urban conditions expressed as a ratio (E_p). The effective work index (W) is computed as the excess shear stress that exceeds a critical value for streambed mobility or bank material erosion integrated over time and represents the total work done on the channel boundary:

$$W = \sum_{i=1}^{n} \left(\tau_i - \tau_c\right)^{1.5} \cdot V \cdot \Delta t_i \qquad (1)$$

Where τ_c = critical shear stress that initiates bed mobility or erodes the weakest bank layer, τ_i = applied hydraulic shear stress, Δt = duration of flows (in hours), and n = length of flow record. The effective work index for presumed stable stream channels under pre-urban conditions is compared to stable and unstable channels under current urbanized conditions. The comparison, expressed as a ratio, is defined as the Erosion Potential (Ep)[1] (McRae (1992, 1996).

$$Ep = \frac{W_{post}}{W_{pre}} \qquad (2)$$

where:

W_{post} = work index estimated for the post-urban condition
W_{pre} = work index estimated for the pre-urban condition

[1] MacRae, C.R. 1992. The Role of Moderate Flow Events and Bank Structure in the Determination of Channel Response to Urbanization. Resolving conflicts and uncertainty in water management: Proceedings of the 45th Annual Conference of the Canadian Water Resources Association. Shrubsole, D, ed. 1992, pg. 12.1-12.21; MacRae, C.R. 1996. Experience from Morphological Research on Canadian Streams: Is Control of the Two-Year Frequency Runoff Event the Best Basis for Stream Channel Protection. Effects of Watershed Development and Management on Aquatic Ecosystems, ASCE Engineering Foundation Conference, Snowbird, Utah, pg. 144-162

ATTACHMENT G

Storm Water Monitoring Program's Constituents with Associated Minimum Levels (MLs)[1]

CONSTITUENTS	MLs
CONVENTIONAL POLLUTANTS	**mg/L**
Oil and Grease	5
Total Phenols	0.1
Cyanide	0.005
pH	0 - 14
Temperature	N/A
Dissolved Oxygen	Sensitivity to 5 mg/L
BACTERIA (single sample limits)	**MPN/100ml**
Total coliform (marine waters)	10,000
Enterococcus (marine waters)	104
Fecal coliform (marine & fresh waters)	400
E. coli (fresh waters)	235
GENERAL	**mg/L**
Dissolved Phosphorus	0.05
Total Phosphorus	0.05
Turbidity	0.1 NTU
Total Suspended Solids	2
Total Dissolved Solids	2
Volatile Suspended Solids	2
Total Organic Carbon	1
Total Petroleum Hydrocarbon	5
Biochemical Oxygen Demand	2
Chemical Oxygen Demand	20-900
Total Ammonia-Nitrogen	0.1
Total Kjeldahl Nitrogen	0.1
Nitrate-Nitrite	0.1
Alkalinity	2
Specific Conductance	1umho/cm
Total Hardness	2
MBAS	0.5
Chloride	2
Fluoride	0.1
Methyl tertiary butyl ether (MTBE)	1
Perchlorate	4 µg/L

[1] For priority pollutants, MLs published in Appendix 4 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP) shall be used for all analyses, unless otherwise specified. Method Detection Levels (MDLs) must be lower than or equal to the ML value, unless otherwise approved by the Regional Board.

ATTACHMENT G

Storm Water Monitoring Program's Constituents with Associated Minimum Levels (MLs)[1]

METALS (Dissolved & Total)	**µg/L**
Aluminum	100
Antimony	0.5
Arsenic	1
Beryllium	0.5
Cadmium	0.25
Chromium (total)	0.5
Copper	0.5
Hex. Chromium	5
Iron	100
Lead	0.5
Mercury	0.5
Nickel	1
Selenium	1
Silver	0.25
Thallium	1
Zinc	1
SEMIVOLATILE ORGANIC COMPOUNDS	**µg/L**
ACIDS	**µg/L**
2-Chlorophenol	2
4-Chloro-3-methylphenol	1
2,4-Dichlorophenol	1
2,4-Dimethylphenol	2
2,4-Dinitrophenol	5
2-Nitrophenol	10
4-Nitrophenol	5
Pentachlorophenol	2
Phenol	1
2,4,6-Trichlorophenol	10
BASE/NEUTRAL	**µg/L**
Acenaphthene	1
Acenaphthylene	2
Anthracene	2
Benzidine	5
1,2 Benzanthracene	5
Benzo(a)pyrene	2
Benzo(g,h,i)perylene	5
3,4 Benzoflouranthene	10

ATTACHMENT G

Storm Water Monitoring Program's Constituents with Associated Minimum Levels (MLs)[1]

BASE/NEUTRAL	µg/L
Benzo(k)flouranthene	2
Bis(2-Chloroethoxy) methane	5
Bis(2-Chloroisopropyl) ether	2
Bis(2-Chloroethyl) ether	1
Bis(2-Ethylhexl) phthalate	5
4-Bromophenyl phenyl ether	5
Butyl benzyl phthalate	10
2-Chloroethyl vinyl ether	1
2-Chloronaphthalene	10
4-Chlorophenyl phenyl ether	5
Chrysene	5
Dibenzo(a,h)anthracene	0.1
1,3-Dichlorobenzene	1
1,4-Dichlorobenzene	1
1,2-Dichlorobenzene	1
3,3-Dichlorobenzidine	5
Diethyl phthalate	2
Dimethyl phthalate	2
di-n-Butyl phthalate	10
2,4-Dinitrotoluene	5
2,6-Dinitrotoluene	5
4,6 Dinitro-2-methylphenol	5
1,2-Diphenylhydrazine	1
di-n-Octyl phthalate	10
Fluoranthene	0.05
Fluorene	0.1
Hexachlorobenzene	1
Hexachlorobutadiene	1
Hexachloro-cyclopentadiene	5
Hexachloroethane	1
Indeno(1,2,3-cd)pyrene	0.05
Isophorone	1
Naphthalene	0.2
Nitrobenzene	1
N-Nitroso-dimethyl amine	5
N-Nitroso-diphenyl amine	1
N-Nitroso-di-n-propyl amine	5
Phenanthrene	0.05
Pyrene	0.05
1,2,4-Trichlorobenzene	1

ATTACHMENT G

Storm Water Monitoring Program's Constituents with Associated Minimum Levels (MLs)[1]

CHLORINATED PESTICIDES	**µg/L**
Aldrin	0.005
alpha-BHC	0.01
beta-BHC	0.005
delta-BHC	0.005
gamma-BHC (lindane)	0.02
alpha-chlordane	0.1
gamma-chlordane	0.1
4,4'-DDD	0.05
4,4'-DDE	0.05
4,4'-DDT	0.01
Dieldrin	0.01
alpha-Endosulfan	0.02
beta-Endosulfan	0.01
Endosulfan sulfate	0.05
Endrin	0.01
Endrin aldehyde	0.01
Heptachlor	0.01
Heptachlor Epoxide	0.01
Toxaphene	0.5
POLYCHLORINATED BIPHENYLS	**µg/L**
Aroclor-1016	0.5
Aroclor-1221	0.5
Aroclor-1232	0.5
Aroclor-1242	0.5
Aroclor-1248	0.5
Aroclor-1254	0.5
Aroclor-1260	0.5
ORGANOPHOSPHATE PESTICIDES	**µg/L**
Atrazine	2
Chlorpyrifos	0.05
Cyanazine	2
Diazinon	0.01
Malathion	1
Prometryn	2
Simazine	2
HERBICIDES	**µg/L**
2,4-D	0.02
Glyphosate	5
2,4,5-TP-SILVEX	0.2

ATTACHMENT I

Storm Water Monitoring Program's Major Outfall Stations

PERMITTEE	STATION ID	LATITUDE	LONGITUDE
City of Camarillo	Camarillo-1	34°13'10.00"N	119° 3'58.06"W
City of Fillmore	Fillmore-1	34°24'16.51"N	118°55'50.47"W
Unincorporated Ventura County	VCMeiners Oaks-1	34°26'43.98"N	119°17'25.18"W
City of Moorpark	Moorpark-1	34°16'44.29"N	118°54'19.40"W
City of Ojai	Ojai-1	34°26'41.25"N	119°14'28.43"W
City of Oxnard	Oxnard-1	34°14'17.38"N	119°11'23.08"W
City of Port Hueneme	Hueneme-1	34° 8'29.30"N	119°11'21.09"W
City of Santa Paula	Santa Paula-1	34°20'54.99"N	119° 3'19.82"W
City of Simi Valley	Simi Valley-1	34°16'18.59"N	118°47'1.51"W
City of Thousand Oaks	Thousand Oaks-1	34°12'49.16"N	118°55'16.24"W
City of Ventura	Ventura-1	34°14'35.86"N	119°11'40.86"W

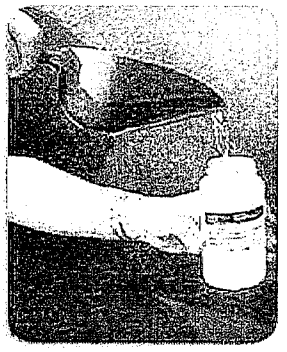
STATE OF CALIFORNIA

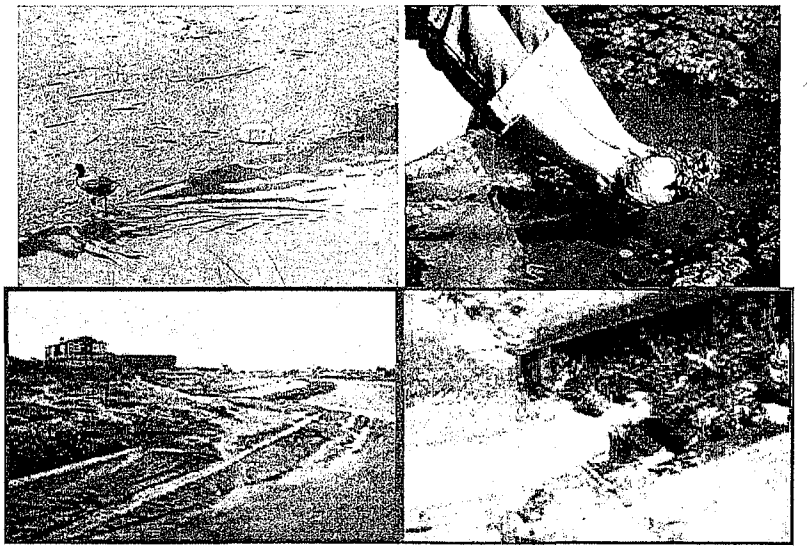
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

MONITORING PROGRAM - No. CI 7388
FOR
ORDER 09-0057
NPDES PERMIT NO. CAS004002
WASTE DISCHARGE REQUIREMENTS

MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGES WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN.

May 7, 2009





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MONITORING PROGRAM

1. The primary objectives of the Monitoring Program include, but are not limited to:
   (a) Assessing the chemical, physical, and biological impacts of municipal storm water sewer system discharges on receiving waters.
   (b) Assessing the overall health and evaluating long-term trends in receiving water quality.
   (c) Assessing compliance with TMDL targets and water quality objectives.
   (d) Characterization of the quality of storm water discharges.
   (e) Identifying sources of pollutants.
   (f) Measuring and improving the effectiveness of measures implemented under this Order.

2. The results of the monitoring requirements outlined below shall be used to refine BMPs for the reduction of pollutant loading and the protection and enhancement of the beneficial uses of the receiving waters in Ventura County.

3. The Permittees shall implement the Monitoring Program as follows:

CORE MONITORING

A. Mass Emissions

I. The Principal Permittee shall monitor mass emissions to accomplish the following objectives:
   i. Estimate the mass emissions from the MS4 to the watershed.
   ii. Assess trends in the mass emissions over time.
   iii. Determine if the MS4 is contributing to exceedances of water quality objectives by comparing results to applicable water quality objectives in the Water Quality Control Plan Los Angeles Region (Basin Plan) and the California Toxics Rule (CTR).

1. The Principal Permittee shall monitor mass emissions from the following 3 mass emission stations:
   (a) ME-VR2 for Ventura River
   (b) ME-SCR for Santa Clara River
   (c) ME-CC for Calleguas Creek

2. The Principal Permittee shall monitor the 3 mass emission stations on an annual basis as per A.3. below.

3. The Principal Permittee shall monitor each mass emission station each year as follows:
   (a) The first storm event of the wet season that produces a 20% or greater increase in base stream flow, and 2 additional storm events; all storm events shall be separated by 7 days of dry weather (less than 0.1 inch of rainfall) from the previously measurable storm event (0.25 inches of rain).
   (b) A total of 4 monitoring events (3 wet-weather storm events, 1 dry-weather) per mass emission station.

4. Samples for mass emission monitoring may be taken with the same type of automatic sampler used under Order 00-108. . Sampling shall be in accordance with USEPA "NPDES Storm Water Sampling Guidance Document, EPA 833-8-92-001, July 1992" or other protocol approved by the Executive Officer.

5. Samplers shall be set to monitor storms that produce a 20% or greater increase in base stream flow.

6. Samples shall be flow-weighted composites, collected during the first 24 hours or for the duration of the storm if it is less than 24 hours.

7. Samples shall be collected from the discharge resulting from a storm event that is 0.25 inches or greater, samples may be analyzed if a predicted storm event produces between 0.15 and 0.24 inches of rain.

8. The flow-weighted composite sample for a storm water discharge shall be taken with a continuous sampler, or it shall be taken as a combination of a minimum of 3 sample aliquots, taken in each hour of discharge for the first 24 hours of the discharge or for the entire discharge if the storm event is less than 24 hours, with each aliquot being separated by a minimum of 15 minutes within each hour of discharge, unless the Regional Water Board Executive Officer approves an alternate protocol.

9. Flow may be estimated using U.S. EPA methods at sites where flow measurement devices are not in place.

10. Grab samples shall be taken only for pathogen indicators, hardness (as mg/L $CaCO_3$), pH, temperature, and DO.

11. Each mass emission shall analyze for all of the Pollutants of Concern (POC) in its specific watershed listed in Attachment "B" (Calleguas Creek Watershed,

Santa Clara River Watershed, and Ventura River Watershed Pollutants of Concern).

12. Each mass emission station shall screen for all constituents listed in Attachment "G" (Storm Water Monitoring Program's Constituents with Associated Minimum Levels), during the first storm event of the wet season for each year sampled. If a constituent is not detected at the Method Detection Limit (MDL) for its respective test method it need not be further analyzed unless the observed occurrence shows concentrations greater than the state water quality objective, and/ or the California Toxics Rule (CTR) for chronic criteria. If a constituent is detected exceeding a Basin Plan objective, and/ or CTR criteria then the constituent shall be analyzed for the remainder of the Order, at the mass emission station where it was detected.

13. At a minimum, a sufficient sample volume must be collected to perform all of the required biological and chemical tests.

14. When monitoring can not be performed to comply with the requirements of this Order due to circumstances beyond the Permittee's control, then within two working days the following shall be submitted to the Regional Water Board Executive Officer:
    (a) Statement of situation.
    (b) Explanation of circumstance(s) with documentation.
    (c) Statement of corrective action for the future.

15. Monitoring results submitted to the Regional Water Board shall include:
    (a) Rain totals and hydrographs for monitoring events in both narrative and graphic formats.
    (b) A narrative description of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable storm event.
    (c) All applicable Standard Monitoring Provisions listed in part "K".

16. Results of monitoring from each mass emission station conducted in accordance with the Standard Operating Procedure submitted under Standard Provision 14 of this Attachment shall be sent electronically to the Regional Water Board's Storm Water site at MS4stormwaterRB4@waterboards.ca.gov, no later than 90 days from sample collection date, highlighting exceedances (Pollutants of Concern, POC) to the Basin Plan objectives for all test results, and the CTR for acute criteria with corresponding sampling dates per mass emission station. The sample data transmitted shall be in the most recent update of the Southern California Municipal Storm Water Monitoring Coalition's (SMC) Standardized Data Transfer Formats (SDTFs).

17. A summary of the annual mass emission monitoring results highlighting exceedances (POC) of the Basin Plan objectives and the CTR for acute criteria, with corresponding sampling dates per mass emission station, shall be included with the Annual Storm Water Report.

B. Major Outfalls

I. The Principal Permittee shall monitor major storm drain outfalls to accomplish the following objectives:
   i. Estimate the annual pollutant load of the cumulative discharges to waters of the State.
   ii. Estimate the event mean concentration of the cumulative discharges to waters of the State.
   iii. Assess trends in the major outfalls over time.
   iv. Estimate the annual pollutant load of discharges to Waters of the U.S.
   v. Estimate the event mean concentration of discharges to Waters of the U.S.
   vi. Assess trends in the major outfalls over time.
   vii. Determine if the MS4 is contributing to exceedences of MALs, and water quality objectives in the Water Quality Control Plan Los Angeles Region (Basin Plan), and the California Toxics Rule (CTR).

1. The Principal Permittee shall monitor:
   (a) End-of-pipe of major outfalls, identified in Attachment I, transporting representative discharges from each Permittee's Municipal drainage area to:
      (1) Major outfalls listed in Attachment "I" (Storm Water Monitoring Program's Major Outfall Stations).
   (b) The first storm event of the wet season that produces at least 0.25 inches of rain, and 2 additional storm events per year, all storm events shall be separated by 7 days of dry weather (less than 0.1 inch) from the previously measurable storm event (0.25 inches).
   (c) A total of 4 monitoring events (3 wet-weather storm events, 1 dry-weather) shall be sampled per identified major outfall.
   (d) In the first year after permit adoption, 4 major outfall stations shall be monitored. Thereafter, all major outfall stations listed in Attachment "I" are to be monitored annually according to the schedule above.

2. If an identified monitoring site is found to be unworkable due to immitigable factors the sampling location may be relocated upon Executive Officer's approval of another location. Best professional judgment shall be used to balance the site selection rationale and criteria to determine the most appropriate site. Due to limited potential locations of urban outfalls to be monitored, there

may be no sites that satisfy all criteria and rationale. Sites will be selected to satisfy the following criteria:

(a) Maximize urban runoff contribution;
(b) Greater than 60% of catchment shall be Permittee's MS4;
(c) Attempt shall be made to avoid outfalls that contain discharge from extra-jurisdictional areas (e.g. agriculture land and other NPDES discharges).
(d) Drainage area should contain representative land uses in a ratio of use as similar as reasonably possible to that found in the Permittee's jurisdiction.
(e) Drainage areas with a higher percentage of the Permittee's MS4 are preferred;
(f) Ability to accurately measure flow
(g) Safety of monitoring personnel is the highest priority. Specific location of sampling collection may be upstream of the actual outfall if field safety or accurate flow measurement require it.

3. Samples shall be collected from the discharge resulting from a storm event that is 0.25 inches or greater, samples may be analyzed if a predicted storm event produces between 0.15 inches and 0.24 inches of rain.

4. Samples shall be collected during the first 24 hours of storm water discharge or for the entire storm water discharge if it is less than 24 hours.

5. Samples shall be flow-weighted composites and can be collected automatically or manually (see subparts A.7 and A.8) in accordance with U.S. EPA protocol or other procedure approved by the Executive Officer.

6. Grab samples shall be taken only for pathogen indicators, hardness (as mg/L $CaCO_3$) and pH, temperature, and DO.

7. Major outfall samples taken within a subwatershed shall be analyzed for the biological and chemical parameters listed in the preceding subpart B.6.

8. Each major outfall station shall screen for all constituents listed in Attachment "G" (Storm Water Monitoring Program's Constituents with Associated Minimum Levels) twice per wet season, per year, (1st storm event of the wet season and one other storm event of the wet season). If a constituent is not detected at the Method Detection Limit (MDL) for its respective test method it need not be further analyzed unless the observed occurrence shows concentrations greater than the state water quality objective, and/ or the California Toxics Rule (CTR) acute criteria. If a constituent is detected exceeding a Basin Plan objective, and/or chronic CTR criteria then the constituent shall be sampled for the remainder of the Order, at the major outfall station where it was detected.

9. At a minimum, a sufficient sample volume must be collected to perform all of the required biological and chemical tests. Sampling shall be in accordance with USEPA "NPDES Storm Water Sampling Guidance Document, EPA 833-8-92-001, July 1992" or other protocol approved by the Executive Officer.

10. When monitoring can not be performed to comply with the requirements of this Order due to circumstances beyond the Permittee's control, then within 2 working days the following shall be submitted to the Regional Water Board Executive Officer:
    (a) Statement of situation
    (b) Explanation of circumstance(s) with documentation
    (c) Statement of corrective action for the future

11. Monitoring results submitted to the Regional Water Board shall include:
    (a) Rain totals and hydrographs for monitoring events in both narrative and graphic formats.
    (b) A narrative description of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable storm event.
    (c) All applicable Standard Monitoring Provisions listed in part "K".

12. Results of monitoring from each major outfall station conducted in accordance with the Standard Operating Procedure submitted under Standard Provision 14 of this Attachment shall be sent electronically to the Regional Water Board's Storm Water Site at MS4stormwaterRB4@waterboards.ca.gov, no later than 90 days from sample collection date, highlighting exceedances to the MALs, the Basin Plan objectives for all test results, and the CTR for acute criteria with corresponding sampling dates per major outfall station. The sample data transmitted shall be in the most recent update of the Southern California Municipal Storm Water Monitoring Coalition's (SMC) Standardized Data Transfer Formats (SDTFs).

13. A summary of the annual major outfall monitoring results, highlighting exceedences (pollutants of concern POC) to the MALs, the Basin Plan objectives, and the CTR for acute criteria with corresponding sampling dates per major outfall station, shall be included with the Annual Storm Water Report.

C. Dry Weather Analytical Monitoring

I. The Principal Permittee shall develop and implement a monitoring program to characterize pollutant discharges from representative MS4 outfalls in each municipality and in the unincorporated County area during dry

weather. This monitoring program shall be implemented within each jurisdiction and shall begin within the 2010-2011 monitoring year.

1. Dry weather analytical monitoring shall include:
   (a) Analytical monitoring, field measurements and observations at selected stations.
   (b) Reports of analytical data in a SWAMP comparable format.

2. Selection of Dry Weather Analytical Monitoring stations: Based upon a review program data, the storm drain system and land uses, the Co-Permittees shall select dry weather analytical monitoring stations within their jurisdiction. At least 5 dry weather analytical monitoring stations need to be identified per Co-Permittee. The dry weather analytical monitoring stations shall be established using the following guidelines and criteria:
   (a) Stations should be located downstream of municipal land uses where illegal or illicit activity may occur;
   (b) Stations shall be located at accessible downstream locations within the storm drain system of each municipality or at major outfalls;
   (c) Hydrological conditions, total drainage area of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types shall be considered in locating stations;
   (d) Each Co-Permittee shall determine a primary station and at least 4 alternate stations to be sampled in case primary stations do not have flow in dry weather. The dry weather monitoring may utilize the same outfalls as those used for wet weather monitoring, if such outfalls are found to discharge during dry weather.
   (e) Fact sheets of general information such as site descriptions (i.e., conveyance type, dominant watershed land uses) shall be created.

3. The Principal and Co-Permittees shall develop and/or update written procedures for dry weather analytical monitoring (these procedures must be consistent with 40 CFR part 136), including field observations, monitoring, and analyses to be conducted. At a minimum, the procedures must meet the following guidelines and criteria:
   (a) Dry weather analytical monitoring shall be conducted at each identified station at least once between May 1st and September 30th of each year.
   (b) If flow or ponded runoff is observed at a dry weather analytical monitoring station and there has been at least seventy-two (72) hours of dry weather, make observations and collect at least one (1) grab sample.
   (c) Record general information such as site descriptions (i.e., conveyance type, dominant watershed land uses), flow estimation (i.e., width of water surface, approximate depth of water, approximate flow velocity, flow rate), and visual observations (i.e., odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology).

4. At a minimum, collect samples for analytical laboratory analysis of the following constituents:
   (a) Total Hardness
   (b) Total Organic Carbon or Oil and Grease
   (c) Lead (Dissolved)
   (d) Zinc (Dissolved)
   (e) Copper (Dissolved)
   (f) Total Coliform bacteria
   (g) E. Coli bacteria

5. Other required field observations include:
   (a) Flow Estimation
   (b) Temperature
   (c) pH
   (d) Odor
   (e) Color
   (f) Turbidity
   (g) Floatables (foam, oil sheen)
   (h) Staining
   (i) Algal growth

6. If the station is dry (no flowing or ponded runoff), make and record all applicable observations and select another station from the list of alternate stations for monitoring.

7. Visually assess the presence of trash in receiving waters and urban runoff. Assessments of trash shall provide information on the spatial extent and amount of trash present, as well as the nature of the types of trash present.

8. Develop and/or update procedures for source identification follow up investigations in the event elevated levels are found. These procedures shall be consistent with procedures required in IC/ID section.

D. Aquatic Toxicity Monitoring

I. The objective of aquatic toxicity monitoring is to evaluate if storm water (wet weather) discharges are causing or contributing to chronic toxic impacts on aquatic life by the following:
   i. Toxicity testing at mass emission and major outfall stations to assess impacts on the marine and freshwater environments.

1. The Principal Permittee shall collect and analyze mass emission and major outfall samples for toxicity to evaluate the extent and causes of toxicity in receiving waters. Permittees shall utilize documents such as: Ventura County's

Technical Guidance Manual for Storm Water Quality Control Measures and U.S. EPA's National Management Measures to Control Nonpoint Source Pollution from Urban Areas to implement measures to eliminate or reduce sources of toxicity in storm water.

2. Toxicity samples may be flow-weighted composite samples or grab samples for both wet and dry event sampling (see subparts A.7 and A.8).

3. Volume of sample shall be determined by specific test methods to be used. At a minimum it is suggested to collect 5 gallons for baseline testing, and an additional 5 gallons for TIE studies. Sufficient sample volume shall be collected to perform the required toxicity tests.

4. All toxicity tests shall be conducted as soon as possible following sample collection. The 36-hour sample holding time for test initiation shall be targeted. However, no more than 72 hours shall elapse before initial use of a sample.

5. When toxicity tests can not be performed to comply with the requirements of this Order due to circumstances beyond the Permittee's control, then the following shall be submitted to the Regional Water Board Executive Officer within 2 working days:
   (a) Statement of situation
   (b) Explanation of circumstance(s) with documentation
   (c) Statement of corrective action for the future

6. The Principal Permittee shall conduct critical life stage chronic toxicity tests on undiluted samples in accordance with:
   (a) U.S. EPA's Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to *West Coast* Marine and Estuarine Organisms, (EPA/600/R-95/136, 1995) for all mass emission stations, and for major outfalls discharging to marine and estuarine environments, or
   (b) U.S. EPA's Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, October 2002 (EPA/821/R-02/013, 2002) or current version for major outfalls discharging to freshwater environments.

7. The Principal Permittee shall analyze samples for chronic toxicity according to the schedule below:
   (a) During the first year of the Order, 2 storm events shall be monitored at each mass emission and major outfall station. The first storm event of the wet season that produces at least 0.25 inches of rain, and 1 additional storm event. All storm events shall be separated by 7 days of dry weather (less than 0.1 inch of rain) from the previously measurable storm event.

(1) During the first year of the Order, all 3 test species shall be used for their respective chronic toxicity test method for the 2 storm events monitored, to determine the most sensitive test species for each monitoring station (see subparts D.8 and D.9 below).

(b) During the next 4 years of the Order, the first storm event of the wet season that produces at least 0.25 inches of rain shall be monitored for each mass emission and major outfall station. .

(1) During the next 4 years of the Order, the most sensitive test species determined from the first year of testing at each mass emission and major outfall station shall be used for its respective chronic toxicity test method (see subpart D.6).

8. Marine and Estuarine Species and Test Methods.

(a) Marine and estuarine species and short-term test methods for estimating the chronic toxicity of NPDES effluents shall be used and are found in the first edition of *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms* (EPA/600/R-95/136, 1995) and applicable water quality standards; also see 40 CFR Parts 122.41(j)(4) and 122.44(d)(1)(iv).

(1) The Permittee shall conduct:

(A) A static renewal toxicity test with the topsmelt, *Atherinops affinis* (Larval Survival and Growth Test Method 1006.01)

(B) A static non-renewal toxicity test with the giant kelp *Macrocystis pyrifera* (Germination and Growth Test Method 1009.0); and

(C) A static non-renewal toxicity test with the purple sea urchin, *Strongylocentrotus purpuratus*, (Fertilization Test Method 1008.0)

(b) In no case shall the preceding toxicity test species be substituted with another organism unless written authorization from the Regional Water Board Executive Officer is received.

9. Freshwater Species and Test Methods.

(a) Species and short-term test methods for estimating the chronic toxicity of NPDES effluent shall be used and are found in the fourth edition of *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002; Table IA, 40 CFR Part 136).

(1) The Permittee shall conduct

(A) A static renewal toxicity test with the fathead minnow, *Pimephales promelas* (Larval Survival and Growth Test Method 1000.0[1])

[1] Daily observations for mortality make it possible to calculate acute toxicity for desired exposure periods (i.e., 7-day LC50, 96-hour LC50, etc.).

(B) A static renewal toxicity test with the daphnid, *Ceriodaphnia dubia* (Survival and Reproduction Test Method 1002.0[1]); and

(C) A static renewal toxicity test with the green alga, *Selenastrum capricornutum* (also named *Raphidocelis subcapitata*) (Growth Test Method 1003.0)

(b) In no case shall the preceding toxicity test species be substituted with another organism unless written authorization from the Regional Water Board Executive Officer is received.

10. The test endpoint data is analyzed using a standard t-test approach. Statistical analysis methods shall be consistent with U.S. EPA test method manuals.

11. If significant toxicity is found then according to paragraph 10.2.6.2 of the U.S. EPA freshwater test methods manual, all chronic toxicity test results from the multi-concentration tests required by this Order must be reviewed and reported according to U.S. EPA guidance on the evaluation of concentration-response relationships found in *Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing (40 CFR 136)* (EPA/821/B-00-004, 2000).

12. Toxic samples shall be immediately subjected to Toxicity Identification Evaluation (TIE) procedures to identify the toxic chemical(s) if toxicity is demonstrated by the standard t-test.

13. A TIE is to be performed to identify the causes of toxicity using the same species and test method and, as guidance, U.S. EPA test method manuals: *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I* (EPA/600/6-91/005F, 1992); *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/080, 1993); *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity* (EPA/600/R-92/081, 1993); and *Marine Toxicity Identification Evaluation (TIE): Phase I Guidance Document* (EPA/600/R-96-054, 1996).

14. The Principal Permittee shall complete chronic Phase I (Toxicity Characterization Procedures) TIEs for all sites showing significant toxicity. For the purpose of triggering TIE (Toxicity Characterization Procedures), significant toxicity is defined as at least 50% mortality. The 50% mortality threshold is consistent with the approach recommended in guidance published by USEPA for conducting TIEs (USEPA, 1996), which recommends a minimum threshold of 50% mortality because the probability of completing a successful TIE decreases rapidly for samples with less than this level of toxicity.

(a) The TIE shall be conducted on test species, demonstrating the most sensitive toxicity response at a sampling station. However, a TIE(s) may be conducted on an additional test species with the caveat that once the toxicant(s) has been identified then the most sensitive test species triggering the TIE event needs to be tested additionally to verify that the toxicant has been identified and addressed.

15. A TIE Prioritization Metric may be utilized to rank sites for TIEs. [2]

16. Toxicity Reduction Evaluation (TRE) when toxicity is identified
    (a) When the same pollutant or class of pollutants is identified through 2 consecutive TIE evaluations, a TRE shall be performed for that identified toxic pollutant.
    (b) The TRE development shall be performed by a neutral third party (retained by the Permittees), in consultation with the Regional Water Board staff.
    (c) The TRE shall include all reasonable steps to identify the source(s) of toxicity and discuss appropriate BMPs to eliminate the causes of toxicity. No later than 30 days after the source of toxicity and appropriate BMPs are identified, the Permittees shall submit the TRE Corrective Action Plan to the Regional Water Board Executive Officer for approval. At a minimum, the Plan shall include a discussion of the following items:
        (1) The potential sources of pollutant(s) causing toxicity.
        (2) A list of municipalities and agencies that may have jurisdiction over sources of pollutant(s) causing toxicity.
        (3) Recommended BMPs to reduce the pollutant(s) causing toxicity.
        (4) Proposed post construction control measures to reduce the pollutant(s) causing toxicity.
        (5) Follow-up monitoring to demonstrate that toxicity has been removed.
    (d) The TRE process shall be coordinated with TMDL development and implementation (i.e., If a TMDL for 4,4'-DDD is being implemented when a TRE for 4,4'-DDD is required, the efforts shall be coordinated to avoid overlap).

17. Results of Toxicity monitoring conducted in accordance with the Standard Operating Procedure under Standard Provision 14 of this Attachment shall be sent to the Regional Board's Storm Water Site at MS4stormwaterRB4@waterboards.ca.gov, no later than 90 days from sample collection date for the initial toxicity test and no more than 30 days from completion of each aspect of the analysis for TIEs/TREs. The sample data transmitted shall be in the most recent update of the Southern California Municipal Storm Water Monitoring Coalition's (SMC) Standardized Data Transfer Formats (SDTFs).

[2] Appendix 5. SMC Model Monitoring Program.

18. The Annual Storm Water Report shall include:
    (a) A full laboratory report for all toxicity testing.
    (b) A summary of the years' mass emission and major outfall monitoring station's toxicity test results reported according to the test methods manual chapter on report preparation and test review.
    (c) The dates of sample collection and initiation of each toxicity test.
    (d) All results for effluent parameters monitored concurrently with the toxicity test(s).
    (e) TIE Phase testing (Phase I, Phase II, and Phase III) that has been or is in the process of being conducted per monitoring station.
    (f) The development, implementation, and results for each TRE Corrective Action Plan in the Annual Storm Water Report, beginning the year following the identification of each pollutant or pollutant class causing toxicity.

19. When the SMC Standardized Toxicity Testing Guidance is completed, the Regional Water Board Executive Officer may direct Permittees to replace the current toxicity program with the standardized guidance procedure.

SPECIAL STUDIES

E. Pyrethroid Insecticides Study

I. The Principal Permittee shall perform a Pyrethroid Insecticides study to accomplish the following objectives:
    i. Establish baseline data for major watersheds
    ii. Evaluate whether Pyrethroid Insecticide concentrations are at or approaching levels known to be toxic to sediment-dwelling aquatic organisms.
    iii. Determine if Pyrethroids discovered are from urban sources.
    iv. Assess any trends over the permit term.

1. The Permittees shall incorporate monitoring for Pyrethroid Insecticides within the Calleguas Creek, Santa Clara River and Ventura River Watersheds according to the following:
    (a) No later than the second year of this Order, monitoring shall begin.
    (b) Quality Assurance Project Plan (QAPP) to be submitted to the Regional Board for approval 12 months prior to beginning monitoring.
    (c) In selecting sites to conduct monitoring for Pyrethroid Insecticides, Permittees shall review existing monitoring programs in the watersheds by other public and private entities, watershed coalitions, and citizen volunteers, so as to complement and not duplicate efforts.

(d) Establish at least 2 stations along the mainstems of each major watershed river that are influenced by urban discharges.
(e) The study shall be repeated every third year following the year monitoring begins.

2. The Principal Permittee shall monitor Pyrethroid Insecticides stations according to the following:
   (a) The Principal Permittee shall monitor 1 sampling event per station per monitoring year.
      (1) Monitoring shall occur after sediment has settled within the waterbody, and safe access can be assured.
   (b) Sufficient sediment is to be collected at each station in a pre-cleaned glass jar by skimming the upper 1 cm of the sediment column with a steel scoop, and held on ice until returned to the laboratory.
   (c) Sediment shall be homogenized in the laboratory by hand mixing, then held at 4 °C (toxicity samples) or -20 °C (chemistry samples).
   (d) All samples taken shall be analyzed for the following Pyrethroids:
      (1) biefenthrin
      (2) cyfluthrin
      (3) cypermethrin
      (4) deltamethrin
      (5) esfenvalerate
      (6) lambda-cyhalothrin
      (7) permethrin
      (8) tralomethrin (if laboratory is capable of analyzing for it)
   (e) Detection limits for all Pyrethroids shall be as close to 1ng/g (dry weight) as reasonably achievable.
   (f) Each sediment sample is to measure the following:
      (1) total organic carbon (TOC).

3. All samples shall be tested for toxicity to 7 to 10 day old ***Hyalella azteca*** according to standard U.S. EPA testing methods.[3]
   (a) Use of the approach described in *Aquatic Toxicity Due to Residential Use of Pyrethroid Insecticides*[4] for toxicity testing shall be used.

4. Analysis by a laboratory that has performed sediment toxicity testing for Pyrethroid Insecticides is preferred.

[3] *U.S. EPA. Methods for Measuring the Toxicity and Bioaccumulation of Sediment-Associated Contaminants with Freshwater Invertebrates*; EPA Publication 600/R-99/064; U.S. Environmental Protection Agency: Washington, DC, 2000; 192 pp.
[4] *Aquatic Toxicity Due to Residential Use of Pyrethroid Insecticides*; Weston, D.P.; Holmes, R.W.; You, J.; Lydy, M.J. Environ. Sci. Technol.; (Article); 2005; 39(24); 9780 pp.

5. Monitoring results from each station shall be sent electronically to the Regional Board's Storm Water Site at MS4stormwaterRB4@waterboards.ca.gov, no later than 90 days from sample collection date. The sample data transmitted shall be in the most recent update of the Southern California Municipal Storm Water Monitoring Coalition's (SMC) Standardized Data Transfer Formats (SDTFs).

6. If toxicity is attributed to Pyrethroids then consultation with staff at U.S. EPA, the California Department of Pesticide Regulations and the California Stormwater Quality Association's (CASQA) pesticides committee (UP3 Project web site), shall be required to obtain relevant information to use in developing the recommendations to mitigate Pyrethroids in the Final Report.

7. Final Report for the Pyrethroid Insecticides study shall contain the following:
   (a) Executive summary
   (b) Methods
   (c) Results (including map depicting monitoring stations)
   (d) Discussion
   (e) Recommendations to mitigate Pyrethroids

8. The Final Report shall be completed and submitted to the Executive Officer of the Regional Water Board no later than 8 months after completion of the study.

The Pyrethroid Insecticides Study requirement may be satisfied by another tributary monitoring program within the Watershed performing a sediment Pyrethroid Insecticides Study that is monitoring to assess pyrethroid concentrations and sediment toxicity, so as to complement other ongoing programs.

F. Hydromodification Control Study

1. The Principal Permittee shall conduct or participate in special studies to develop tools to predict and mitigate the adverse impacts of Hydromodification, and to comply with hydromodification control criteria. This can be achieved by the following:
   (a) Develop a mapping and classification system for streams based on their susceptibility to the effects of hydromodification.
   (b) Establish protocols for ongoing monitoring to assess the effects of hydromodification.
   (c) Develop dynamic models to assess the effects of hydromodification on stream condition.
   (d) Develop a series of tools that managers can easily apply to make recommendations or set requirements relative to hydromodification for new development and redevelopment.

2. The Principal Permittee may satisfy this requirement by participating in the 'Development of Tools for Hydromodification Assessment and Management' Project undertaken by the SMC and coordinated by the SCCWRP.

3. The Principal Permittee shall continue to partner with the SMC and collect data or sponsor its collection for the Ventura County sites to reduce statistical uncertainty and/ or improve model predictability.

4. The Principal Permittee shall submit a letter to the Regional Water Board Executive Officer stating how they will satisfy this requirement, no later than July 7, 2009.

G. Low Impact Development

1. The Principal Permittee shall conduct or participate in a special study to assess the effectiveness of low impact development techniques in semi-arid climate regimes such as in Southern California.

2. The Principal Permittee may satisfy this requirement by participating in the SMC project titled "Quantifying the Effectiveness of Site Design/ Low Impact Development Best Management Practice in Southern California".

3. The Principal Permittee shall submit a letter to the Regional Water Board Executive Officer stating how they are satisfying this requirement, no later than 2 months after deciding to either conduct or participate in special study.

H. Southern California Bight Project

1. The Principal Permittee and Permittees shall participate with other government organizations regulating discharges in southern California in the collaboration to conduct a regional monitoring survey (Southern California Bight Project (SCBP)), which was started in 2008 and to be continued in successive years. The survey's primary objective is to assess the spatial extent and magnitude of ecological disturbances on the mainland continental shelf of the SCB and to describe relative conditions among different regions of the SCBP.

2. The Principal Permittee shall participate on the Steering Committee for the bight-wide monitoring project, and assist with the estuary and nearshore sampling effort requirement of the proposed monitoring project for Ventura County as defined in the SCBP plan.

I. Bioassessment

1. The Principal Permittee consents to participate in the following regional water quality program for watershed management and planning:

(a) SMC Regional Monitoring Program
  (1) Southern California Regional Bioassessment
    (A) Level of effort per watershed per year
      (i) Probabilistic sites per watershed
        (I) Ventura River - Six
        (II) Santa Clara River - Three
        (III) Calleguas Creek - Six
      (ii) Integrator sites per watershed
        (A) Ventura River - One
        (B) Santa Clara River - One
        (C) Calleguas Creek – One

(b) Ventura County Bioassessment: Permittees shall conduct bioassessment at one fixed site in each of the watersheds above on an annual basis. Southern California Regional Bioassessment protocols shall be used to conduct the Ventura County Bioassessment program.

J. Volunteer Monitoring Programs

1. The Permittees shall provide limited assistance if requested in the development and implementation of volunteer monitoring programs in the Ventura watersheds. These include, but are not limited to the following:
   (a) Ventura River - (Ventura Stream Team).
   (b) Santa Clara River - (Santa Clara River Stream Team).
   (c) Calleguas Creek - (Calleguas Creek Watershed Quality Monitoring Program).
   (d) Malibu Creek - (Malibu Creek Watershed Quality Monitoring Program).

K. Standard Monitoring Provisions

I. All monitoring activities shall meet the following requirements.

1. Monitoring and Records [40 CFR 122.41(j)(1)]
   (a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Monitoring and Records [40 CFR 122.41(j)(2)] [CWC §13383(a)]
   (a) The Principal Permittee and Permittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the Report of Waste Discharge (ROWD) and application for this Order, for a period of at least five (5) years from the date of the sample, measurement, report, or application. This period may be extended by request of the Regional Water Board or U.S. EPA at any time and shall be extended during the course of any unresolved litigation regarding this discharge.
3. Monitoring and Records [40 CFR 122.21(j)(3)]

(a) Records of monitoring information shall include:
  (1) The date, time of sampling or measurements; exact place, weather conditions, and rain fall amount.
  (2) The individual(s) who performed the sampling or measurements.
  (3) The date(s) analyses were performed.
  (4) The individual(s) who performed the analyses.
  (5) The analytical techniques or methods used.
  (6) The results of such analyses.
  (7) The data sheets showing toxicity test results.

4. Monitoring and Records [40 CFR 122.21(j)(4)]
   (a) All sampling, sample preservation, and analyses must be conducted according to test procedures under 40 CFR Part 136, unless other test procedures have been specified in this Order. If a particular Minimum Level (ML) is not attainable in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure may be used instead.

5. Monitoring and Records [40 CFR 122.21(j)(5)]
   (a)The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Order shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or both.

6. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory:
   (a) Certified for such analyses by an appropriate governmental regulatory agency.
   (b) Participated in 'Intercalibration Studies' for storm water pollutant analysis conducted by the SMC. [5]
   (c) Which performs laboratory analyses consistent with the storm water monitoring guidelines as specified in, the *Stormwater Monitoring Coalition Laboratory Guidance Document,* 2nd Edition R. Gossettt and K. Schiff (2007), and its revisions.

[5] The 'Intercalibration Studies' are conducted periodically by the SMC to establish a consensus based approach for achieving minimal levels of comparability among different testing laboratories for storm water samples to minimize analytical procedure bias. Stormwater Monitoring Coalition Laboratory Document, Technical Report 420 (2004) and subsequent revisions and augmentations.

7. For priority toxic pollutants that are identified in the CTR (65 *Fed. Reg.* 31682), the MLs published in Appendix 4 of the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California* (SIP) shall be used for all analyses, unless otherwise specified. The MLs from the SIP are incorporated into Attachment "G".

8. The Monitoring Report shall specify the analytical method used, the Method Detection Level (MDL) and the ML for each pollutant. For the purpose of reporting compliance with numerical limitations, performance goals, and receiving water limitations, analytical data shall be reported with 1 of the following methods, as appropriate:
   (a) An actual numerical value for sample results greater than or equal to the ML.
   (b) "Not-detected (ND)" for sample results less than the laboratory's MDL with the MDL indicated for the analytical method used.
   (c) "Detected, but Not Quantified (DNQ)" if results are greater than or equal to the laboratory's MDL but less than the ML. The estimated chemical concentration of the sample shall also be reported. This is the concentration that results from the confirmed detection of the substance by the analytical method below the ML value.

9. For priority toxic pollutants, if the Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP. The Principal Permittee must submit documentation from the laboratory to the Regional Water Board Executive Officer for approval prior to raising the ML for any constituent.

10. Monitoring Reports [40 CFR 122.41(I)(4)(ii)]
   (a) If the Principal Permittee monitors any pollutant more frequently than required by the Order using test procedures approved under 40 CFR part 136, unless otherwise specified in the Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Annual Monitoring Reports.

11. Monitoring Reports [40 CFR 122.41(I)(4)(iii)]
   (a) Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order.

12. If no flow occurred during the reporting period, then the Monitoring Report shall, so state.

13. The Regional Water Board Executive Officer or the Regional Board, consistent with 40 CFR 122.41, may approve changes to the Monitoring Program, after providing the opportunity for public comment, either:
    (a) By petition of the Principal Permittee or by petition of interested parties after submittal of the Monitoring Report. Such petition shall be filed not later than 60 days after the Monitoring Report submittal date, or
    (b) As deemed necessary by the Regional Water Board Executive Officer following notice to the Principal Permittee.

14. The Principal Permittee must provide a copy of the Standard Operation Procedures (SOPs) for the Monitoring Program No. CI 7388 to the Regional Water Board upon request. The SOP will consist of five elements: Title page, Table of Contents, Procedures, Quality Assurance/ Quality Control (QA/ QC), and References. Briefly describe the purpose of the work or process, including any regulatory information or standards that are appropriate to the SOP process, and the scope to indicate what is covered. Denote what sequential procedures should be followed, divided into significant sections; e.g., possible interferences, equipment needed personnel qualifications, and safety considerations. Describe QA/ QC activities, and list any cited or significant references.

L. Total Maximum Daily Load (TMDL) Monitoring

1. TMDL monitoring is to determine compliance with the TMDL Waste Load Allocations (WLAs) and numeric targets for the MS4 Permittees that have been adopted by the Regional Water Board and have been approved by the Office of Administrative Law and the U.S. EPA.

2. TMDL monitoring is in accordance with approved TMDLs as discussed in part 6 of the permit. TMDL monitoring for specific watersheds is in accordance with the agreed upon monitoring plans submitted by stakeholders, including MS4 Permittees.

M. Beach Water Quality Monitoring

If funding from state and federal sources is not available for beach water quality monitoring the Principal Permittee shall conduct weekly year-round beach water quality sampling and analysis at a maximum of ten sites in accordance with the procedures and locations used in AB 411 monitoring and listed below:

1. Rincon Beach – 25 yards south of the creek mouth*
2. Oil Piers Beach – south of the drain, bottom of the wood staircase
3. Faria County Park – south of the drain at the north end of the park*
4. Solimar Beach – south (end of east gate access road)*
5. Emma Wood State Beach – 50 yards south of first drain
6. Oxnard Beach – at J Street drain

7. Surfer's Point at Seaside – end of the access path via wooden gate
8. Promenade Park – Figueroa Street
9. Surfer's Knoll – beach adjacent to the parking lot*
10. San Buenaventura Beach – south of drain at San Jon Road

* Not associated with MS4 discharges.

Ordered by:

Chief Deputy E.O. for

Tracy J. Egoscue
Executive Officer

Date: May 7, 2009

STATE OF CALIFORNIA

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

REPORTING PROGRAM - No. CI 7388
FOR
ORDER No. 09-0057
NPDES PERMIT NO. CAS004002
WASTE DISCHARGE REQUIREMENTS

MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGES WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN.

May 7, 2009

May 7, 2009
Final

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Reporting Program Requirements

The Principal Permittee shall submit by December 15th of each year, beginning the year of 2007, an Annual Report to the Regional Water Board Executive Officer in the form of one hard copy and three compact disks (CD) (or equivalent electronic format).

1. The Annual Report shall document the status of the General Storm Water Program, an integrated summary of the results of analyses from:
   (a) The monitoring program described under Part 1-Monitoring Report; and
   (b) The requirements described under Part 2- Program Report.

2. Plans shall be submitted to the Regional Water Board Executive Officer in the form of a hard copy and on a compact disk (CD), submit 1 hard copy and 3 CD copies.

3. Study Reports shall be submitted to the Regional Water Board Executive Officer in the form of a hard copy and on a CD, submit 1 hard copy and 3 CD copies.

4. Progress Reports shall be submitted to the Regional Water Board Executive Officer in the form of a hard copy and on a CD, submit 1 hard copy and 3 CD copies.

PART 1 - MONITORING REPORT

A. The following shall be included in the Annual Report:

1. Mass Emissions
   (a) Assess the variability of storm water constituents from the results of all monitored storms events.
   (b) Rain totals and hydrographs for monitoring events in both narrative and graphic formats.
   (c) A summary of the mass emission station annual monitoring results highlighting exceedences (POC) with corresponding sampling.

2. Major Outfalls
   (a) Assess the variability of storm water constituents from the results of all monitored storms events.
   (b) Rain totals and hydrographs for monitoring events in both narrative and graphic formats.
   (c) A summary of the major outfalls station annual monitoring results highlighting exceedences (POC) with corresponding sampling dates.
   (d) Outfall(s) name and ID number (if applicable).

3. Aquatic Toxicity Monitoring
   (a) An analysis of the mass emission station and major outfall station samples for aquatic toxicity.
   (b) A report on the development, implementation, and results for each TRE Corrective Action Plan in the Annual Report, beginning the year following the identification of each pollutant or pollutant class causing toxicity.
   (c) Report on the development, implementation, and results for each TRE Corrective Action Plan, beginning the year following the identification of each pollutant or pollutant class causing toxicity.
   (d) All constituents (POCs) that caused toxicity or exceeded any applicable water quality objectives at the associated mass emission and/ or major outfall station the previous year shall be listed.
   (e) A summary of the mass emission station and major outfall station annual monitoring results with corresponding sampling dates and Tox output.

4. TMDL Compliance Monitoring
   (a) A summary of the annual monitoring results for each TMDL.
      (1) Corresponding sampling dates and Tox output (if applicable).

5. Bioassessment
   (a) Assess the effects of MS4 discharges on the biological integrity of the waterbody.
   (b) Permittees shall conduct bioassessment, [using Southern California Regional Bioassessment protocol], at one fixed site in each of the watersheds below on an annual basis:
      (1) Ventura River
      (2) Santa Clara River
      (3) Calleguas Creek

B. The following shall be submitted to the Regional Water Board Executive Officer:

1. Aquatic Toxicity Monitoring
   (a) A TRE Corrective Action Plan within 30 days after the source of toxicity and appropriate BMPs are identified.

2. Pyrethroid Insecticides Study
   (a) Pyrethroid insecticides study final report, no later than 8 months after completion of the study.

3. Hydromodification Control Study
   (a) Letter stating how the Principal Permittee is satisfying this requirement, no later than 2 months after deciding to either conduct or participate in special studies.

4. Non-Compliance

(a) When monitoring can not be performed to comply with the requirements of this Order due to circumstances beyond the Permittees' control, then within 48 hours the following shall be submitted:
(1) Statement of situation.
(2) Explanation of circumstance(s) with documentation.
(3) Statement of corrective action for the future.

5. Low Impact Development
(a) Letter stating how the Principal Permittee is satisfying this requirement, no later than 2 months after deciding to either conduct or participate in special studies.

6. Volunteer Monitoring Program
(a)Results as obtained by volunteer monitoring programs in the Ventura watersheds including, but not limited to, the following:
(1) Ventura River - (Ventura Stream Team)
(2) Santa Clara River - (Santa Clara River Stream Team)
(3) Calleguas Creek - (Calleguas Creek Watershed Quality Monitoring Program)
(4) Malibu Creek - (Malibu Creek Watershed Quality Monitoring Program)

C. Submitted electronically to the Regional Water Board, the following shall be:

1. Mass Emissions
(a) Monitoring results no later than 45 days from sample collection date.

2. Major Outfalls
(a) Monitoring results no later than 45 days from sample collection date.

3. Aquatic Toxicity Monitoring
(a) Monitoring results no later than 45 days from sample collection date.

3. TMDL Compliance Monitoring
(a) Monitoring results no later than 45 days from sample collection date.

4. Non-Compliance
(a) When the Order 's monitoring requirements can not be performed due to circumstances beyond the Permittees' control, then within 48 hours the following shall be submitted to the Regional Water Board Executive Officer:
(1) Statement of situation.
(2) Explanation of circumstance(s) with documentation.
(3) Statement of corrective action for the future.

5. Data transmitted shall be in the SMCs Standardized Data Transfer Formats (SDTFs) and all updates are to be adhered to.[1]
   (a) Regional Water Board's Storm Water E-mail Address: **MS4stormwaterrb4@waterboards.ca.gov**

6. Beach Water Monitoring
   (a) Assess bacteriological levels at various beaches in Ventura County, ensuring compliance with beach water quality standards.
   (b) Reports of beach monitoring shall be submitted to the Regional Board electronically within one business day of completion of analysis.

PART 2 - PROGRAM REPORT

On an annual basis the Permittees shall complete an Annual Monitoring Program Report that responds adequately to the evaluative questions below which correspond to the Order.

DISCHARGE PROHIBITIONS

(a) Have you effectively prohibited all non-storm discharges into the MS4 and watercourses?
(b) If there are any exceptions in the municipal code, list the exceptions to the municipal code. In other words, which non-storm water discharges does your municipality allow? Under what conditions are they allowed (with BMPs)? List which BMPs are required prior to discharge.

(c) Do you have a procedure to assure that any project within your jurisdiction which may undertake ground water dewatering obtain a permit from the Regional Water Board?
(d) How many projects are permitted to dewater in your jurisdiction?
(e) How many are permanent dewatering to continue after construction is completed?
(f) Do you have a permitting/ permission system for the discharge of dechlorinated/ debrominated swimming pool discharges? Explain it.
(g) If yes, how many swimming pools are drained with the agency's permit/ permission?
(h) How do you ensure that discharge limits for chlorine, bromine, etc are not exceeded?
(i) Do you allow the discharge of "salt water" swimming pool discharges? If yes
(j) Do you have a permitting/ permission system for the discharge of "salt water" swimming pool discharges? Explain it.

[1] The SMC developed a SDTFs for use by member agencies for electronic recording and transfer of storm water monitoring data. Southern California Coastal Water Research Project, Technical Report 421 (August, 2004).

RECEIVING WATER LIMITATIONS

1. At any time, has the discharge from the MS4 caused or contributed to the violation of water quality objectives or water quality standards?

2. At any time, has the discharge from the MS4 for which a Permittee is at least partially responsible, caused or contributed to a condition of nuisance?
3. At any time, has the discharge of pollutant(s) from the MS4 exceeded the MS4 Waste Load Allocation(s) for Wet Weather Discharges?

4. For pollutant(s) which continue to cause or contribute to water quality impairments, but for which TMDLs have not yet been developed or approved, what has the Permittee implemented to eliminate future water quality impairments?

PART 3 - STORM WATER QUALITY MANAGEMENT PROGRAM IMPLEMENTATION

A. General Requirements

B. Legal Authority

1. Does your municipal agency possess all the necessary legal authority to implement and enforce each requirement of this Order?
2. If the answer is no, explain why not.
3. By what date certain will the municipal agency have all the necessary legal authority?
4. Attach a copy of the new or updated statement by its legal counsel that the Permittee has obtained all necessary legal authority to comply with this Order through adoption of ordinances and/ or municipal code modifications.
5. After submitting the Statement from your legal counsel, was your city's municipal code (or other legal authority) changed (Any section that applies to or affects storm water permitting or requirements)? On what date(s) was it changed? Provide the changes.

C. Fiscal Resources

1. Provide a detailed Annual Budget Summary of the Permittee's allocation of funds expended to implement the activities required to comply with the conditions of this Order.
2. Indicate the source(s) of funding (whether general funds; and/ or Benefit Assessment Program funds; plan review fees; permit fees; industrial/ commercial user fee; revenue bonds; grants; or other funding mechanism. Each Permittee's Annual Budget Summary shall separately include:
3. Annual Budget Summary of expenditures applied to the storm water management program and also identify the storm water budget for the following year, using

estimated percentages and written explanations where necessary, for the specific categories noted below:

(a) Program Overall Management Activities;
    (1) Administrative costs

(b) Program Required Activities Implementation;
Provide an estimated percent breakdown of expenditures for the categories below:
    (1) Illicit connection/ illicit discharge
    (2) Development planning
    (3) Development construction
    (4) Construction inspection activities
    (5) Industrial/ Commercial inspection activities
    (6) Public Agency Activities
    (7) Maintenance of Structural BMPs and Treatment Control BMPs
        (A) Municipal Street Sweeping for Commercial/ Industrial landuse only;
        (B) Catch basin clean-outs (including dumping fees);
        (C) Storm drain clean-outs (including dumping fees); and
        (D) Other costs (describe).
    (8) Public Information and Participation;
    (9) Monitoring Program; and
    (10) Miscellaneous Expenditures (describe).

D. Designation and Responsibilities of the Principal Permittee

The Principal Permittee shall submit within the Annual Program Report information on the implementation of the following:

1. Coordination and facilitation of activities to comply with the requirements of this Order;
2. Evaluation, assessment, and summary of the results of the monitoring program and the effectiveness of the implementation of BMPs and any recommended change.

E. Responsibilities of the Permittees

Each Permittee shall include within the Annual Program Report information on the implementation of the following:

1. A statement under penalty of perjury that the Permittee is or is not in compliance with the requirements of this Order and any subsequent modifications thereto.
2. A summary of how coordination occurs among its internal departments and agencies to ensure the implementation of the requirements of this Order.
3. Description of the intra-agency coordination by Agency departments (e.g. Community Development (Planning), Public Works, Sanitation, Engineering, Fire Department, Building and Safety, Code Enforcement, Public Health, Water and/ or Power Department, etc.) to ensure the successful implementation of the provisions of this Order.

4. In addition to the Budget Summary, identify any supplemental dedicated budgets for the storm water categories listed.
5. Identify the staff which participated at all committee or subcommittee meetings and when.

PART 4 - SPECIAL PROVISIONS

A. General Requirements

1. Best Management Practice Substitution
   (a) Did the Regional Water Board Executive Officer approve any site-specific BMP substitution for your agency?
   (b) If so, describe implementation of that/ those BMP(s).

B. Watershed Initiative Participation

1. Describe your participation (Principal Permittee) and present data results in the following:
   (a) Southern California Stormwater Monitoring Coalitions' (SMC) Regional Monitoring program for the Southern California Regional Bioassessment.

C. Public Information and Participation Program (PIPP)

1. Describe the Permittee successes in:

- Measurably increasing the knowledge of the target audiences regarding the MS4, the impacts of storm water pollution on receiving waters and potential solutions to mitigate the problems caused;
- Measurably changing the waste disposal and runoff pollution generation behavior of target audiences by encouraging implementation of appropriate solutions;
- Involving and engaging communities in Ventura County to participate in mitigating the impacts of storm water pollution.

2. Residential Program
   (a) Did the Permittee label each storm drain inlet that they own with a legible "no dumping" message.
   (b) How many inlets were labeled this year?
   (c) How many inlets were labeled cumulatively?
   (d) Did the Permittee install signs with prohibitive language discouraging illegal dumping at designated public access points to creeks, other relevant water bodies, and channels?
   (e) How many?

   <u>Public Reporting</u>

(a) Identify the staff person(s) who will serve as the contact person(s) for reporting clogged catch basin inlets and illicit discharges/ dumping, faded or lack of catch basin stencils, and general storm water management information.
(b) Did the Permittee update this information by July 1 of this year?
(c) The Principal Permittee shall compile a list of the general public reporting contacts from all Permittees and make this information available on the web site (http://www.vcstormwater.org/contact.htm) and upon request.

Outreach and Education

(1) Provide documentation to show that the Permittees implemented the following activities:
- Storm Water pollution prevention advertising campaign.
- Storm Water pollution prevention public service announcements.
- Distribution of storm water pollution prevention public education materials to auto parts stores, home improvement centers and pet shops/ feed stores in regards to information on the proper storage and disposal of household waste materials, construction waste materials and vehicle waste fluids, the proper use of fertilizers and pesticides and the proper disposal of animal wastes.
- Organization of watershed Citizen Advisory Groups/ Committees to develop/ implement effective methods to educate the public about storm water pollution.
- Organization of events for residents and population subgroups.
- Maintenance of the Countywide storm water website (www.vcstormwater.org), including educational materials.

(2) Provide documentation to show that the Principal Permittee implemented the strategy to educate ethnic communities through culturally acceptable and effective methods.

(3) Did each Permittee implement outreach efforts to residents and school children related to the proper disposal of litter, green waste, pet waste, proper vehicle maintenance, lawn care and water conservation practices?

(4) Did the Permittees make demonstrable positive effects on the general public related to storm water quality?

(5) On 4 above, explain how so.

(6) Did the Principal Permittee, in cooperation with the Permittees, provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution?

(8) Provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee and changes to contact information no later than 30 days after a change occurs.

(9) Provide the assessment of the strategy to measure the effectiveness of in-school educational programs.

Businesses Program
(a) Corporate Outreach
(b) Provide a progress update on the Corporate Outreach program.

D. Industrial/ Commercial Facilities Program

Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water runoff. Except as specified in other sections of this Order, pollutant reduction and control measures may be used alone or in combination, and may include Structural Treatment Control, Source Control BMPs, and operation and maintenance procedures, which may be applied before, during, and/ or after pollution generating activities. At a minimum, the Industrial/ Commercial Facilities Control Program Report shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance with municipal ordinances at industrial and commercial facilities that are critical sources of pollutants in storm water runoff.

1. Inventory of Critical Sources
   (a) Describe how the critical sources are inventoried, whether via a watershed-based inventory or database or GIS. Provide a sample.
   (b) Each Permittee shall include the following minimum fields of information for each critical sources industrial and commercial facility.
      (1) Name of facility and owner/ operator.
      (2) Address of facility.
      (3) Coverage under the ISWGP or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Board pertaining to runoff discharges.
      (4) A narrative description including SIC (NAICS) codes that best describe the industrial activities performed and principal products used at each facility and status of exposure to storm water.
   (c) Did each Permittee update its inventory of critical sources annually?
   (d) Critical Source Inventory Database

Did you (individually or jointly) update the Database for Critical Sources Inventory?	Yes ☐ No ☐

Comments/ Explanation/ Conclusion:

2. Inspection Program
   (a) The Permittee shall verify the following for each inspection:
      (1) The facility has a current Waste Discharge Identification (WDID) number or a current No Exposure Certification for discharging storm water associated with industrial activity?
      (2) A Storm Water Pollution Prevention Plan available on-site?
      (3) The facility is effectively implementing BMPs in compliance with County and municipal ordinances including the source control BMPs outlined in Part 4.D. of this Order
      (4) The facility needs to implement additional treatment control BMPs where the storm water from the MS4 discharges to a CWA §303(d) listed water body?

Provide the reporting data as suggested in the following table.

Category	Initial Number of Facilities at the start of cycle proposed for inspection by categories (after the initial year, the updated number based on the new data)	Number of facilities inspected in the current reporting year	% Completed at the time of this report for present cycle (from the initial value, and from the updated value after first cycle)	Total number since permit adoption
Landfills				
TSDF				
Comments/ Explanation/ Conclusion:				

- Did each Permittee perform an initial inspection at all facilities in the categories listed no later than (two years after the adoption of the Order)?

- All facilities determined as having exposure of industrial activities to storm water are subject to a second compliance inspection. Were all inspections completed?

- Was there a minimum interval of six months between the first and the second compliance inspection per site as required?

BMPs Implementation

Provide the reporting data as suggested in the following table.

Category	Number of facilities inspected by category this reporting year	Number of facilities identified as adequately implementing BMPs as specified in this reporting year	Percent adequately implementing out of total in this reporting year	Number of facilities required to implement or upgrade in this reporting year	Number of facilities inspected by category in this reporting cycle	Number of facilities identified as adequately implementing BMPs as specified in this reporting cycle	Percent adequately implementing out of total in this reporting cycle	Number of facilities required to implement or upgrade in this reporting cycle	Total Number during this permit adequately implementing	Total Number during this permit required to implement or upgrade
Landfills										
etc…										

Comments/ Explanation/ Conclusion:

Enforcement Activities

Provide the reporting data as suggested in the following tables.

Enforcement Actions by categories (e.g. Warning letter, NOV, referral to D.A., etc.)	Number of facilities issued enforcement actions in the current reporting year	Number of facilities issued enforcement actions in the current reporting cycle	Number of facilities (re)inspected due to enforcement actions in current reporting year	Number of facilities (re)inspected due to enforcement actions in current reporting cycle	Number of facilities brought into compliance in the current reporting year	Number of facilities brought into compliance in current reporting cycle	Total number of enforcement actions since permit adoption (by category)
NOVs							
Etc…							

Facilities by category	Number of Warning letters	Number of NOVs	Number of Referrals	Number of Other(Explain)
Landfill				
Etc…				
Comments/ Explanation/ Conclusion:				

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Nurseries and nursery centers

(a) At nurseries subject to the agricultural waiver issued by the Regional Water Board, provide a spreadsheet with the following information:
- How many operators have enrolled under the waiver?
- What is their identification number?
- How many nonfilers did you notify to apply under the agricultural waiver?

(b) Did you submit electronically semiannually to the Regional Water Board a list with the names of facilities notified to apply for the waiver?

Ensuring Compliance of Critical Sources

(a) On how many sites did you determine that a BMP is infeasible, and require implementation of other BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges?

(b) For critical sources that discharge to ESAs or that are tributary to CWA § 303(d) impaired water bodies, does the Permittee require operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to exceedences of Water Quality Standards?

Investigation of Complaints Regarding Facilities – Transmitted by the RB Staff

(a) How many investigations were conducted as a result of USEPA or Regional Water Board staff referrals of violators to the Permittee?

(b) Was the investigation initiated within one business day of being contacted?

(c) What were the results of each investigation?

E. Planning and Land Development Program

1. Low Impact Development

(a) Did all new development and redevelopment projects integrate Low Impact Development (LID) principles into project design?

(b) How many did?

(c) How many did not?

(d) If not, Why not?

Numeric Hydromodification Mitigation Criteria

1. Hydrologic (Flow/ Volume/ Duration) Control

(a) Did the Permittees require all new developments and redevelopment projects to implement hydrologic control measures, to prevent accelerated downstream erosion and to protect stream habitat in natural drainage systems?

(b) How many did?

(c) How many did not?

(d) Why not?

2. Post Construction Storm Water BMP Program

(a) For each project, did each Permittee require that during the construction of a single-family hillside home, actions be taken to:
  (1) Conserve natural areas?
  (2) Protect slopes and channels?
  (3) Provide storm drain system stenciling and signage?
  (4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability? and
  (5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability?

(b) Did each Permittee require that all development projects equal to 1 acre or greater be subject to conditioning and approval of post-construction BMPs as approved by the Regional Water Board in Board Resolution No. R 00-02?

(c) Did each Permittee require that the following development projects be subject to conditioning and approval of post-construction BMPs?
  (1) Retail gasoline outlets 5,000 square feet or more of surface area; How many sites?
  (2) Restaurants (SIC 5812) 5,000 square feet or more of surface area; How many sites?
  (3) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces; How many sites?
  (4) Automotive service facilities (SIC 5013,5014,5541,7532-7534 and 7536-7539) [5,000 square feet or more of surface area]; How many sites? and
  (5) Redevelopment projects in subject categories that meet Redevelopment thresholds. How many sites?

(d) Did each Permittee require that post construction BMPs be subject to conditioning and approval for development projects located in or directly adjacent to or discharging directly to an Environmentally Sensitive Area (ESA), where the development will:
  (1) Discharge storm water and urban runoff that is likely to impact a sensitive biological species or habitat.
  (2) Create 2,500 square feet or more of impervious surface area.

3. Numeric Water Quality Design Criteria

<u>Projects disturbing land areas less than 50 acres</u>

(a) Ho many did the Permittee require that post-construction Treatment Control BMPs incorporate, at a minimum, a volumetric and/ or hydrologic (flow based) treatment control design standard, as identified below to mitigate (infiltrate, filter or treat) storm water runoff as specified below?
(b) How many sites were exempted from the requirement?
(c) Why were they exempted?

Projects disturbing land area of 50 acres or greater

For sites 50 acres or greater how many did the Permittee require that post-construction Treatment Control BMPs be,

(a) Designed using an appropriate public domain hydrodynamic model (such as Storm Water Management Model (SWMM) 5 or Hydrologic Engineering Center – Hydrologic Simulation Program – Fortran (HEC-HSPF); and incorporate
(b) Rainfall intensity based on hourly rainfall records;
(c) An adjustment factor for within hour rainfall variability; and
(d) Hydraulics of BMP Performance.
(e) How many projects did this apply to?
(f) Were there any sites that were exempted from the requirement?
(g) How many sites were exempted?
(h) Why were they exempted?

4. Applicability of Numerical Criteria

Did the Permittee require all projects equal to 1 acre or greater and the following additional projects to design and implement post-construction treatment controls to mitigate storm water pollution for the following?:
(a) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or more of surface area].
(b) Retail gasoline outlets [5,000 square feet or more of impervious surface area and with projected Average Daily Traffic (ADT) of 100 or more vehicles]. Subsurface Treatment Control BMPs which may endanger public safety (i.e., create an explosive environment) are considered not appropriate.
(c) Restaurants (SIC 5812) [5,000 square feet or more of surface area].
(d) Parking lots 5,000 square feet or more of surface area or with 25 or more parking spaces.
(e) Projects located in, adjacent to or discharging directly to an ESA that meet threshold conditions identified above in 2(d).
(f) Redevelopment projects in subject categories that meet Redevelopment thresholds.
(g) How many projects did this apply to?
(h) Were there any sites that were exempted from the requirement?
(i) How many sites were exempted?
(j) Why were they exempted?

5. Site Specific Mitigation
(a) List how many sites did each Permittee require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment not identified in Section 4.E but which may potentially have

adverse impacts on post-development storm water quality, with one or more of the following project characteristics:
(1) Vehicle or equipment fueling areas. How many?
(2) Vehicle or equipment maintenance areas, including washing
(3) and repair. How many?
(4) Commercial or industrial waste handling or storage. How many?
(5) Outdoor handling or storage of hazardous materials. How many?
(6) Outdoor manufacturing areas. How many?
(7) Outdoor food handling or processing. How many?
(8) Outdoor animal care, confinement, or slaughter. How many?
(9) Outdoor horticulture activities. How many?

(b) Were there any sites that were exempted from the requirement?
(c) How many sites were exempted?
(d) Why were they exempted?

6. Redevelopment Projects
(a) Did the Permittees apply the post construction BMP requirements, or site specific requirements including post-construction storm water mitigation to all projects that undergo significant Redevelopment in their respective categories?
(b) How many?
(c) Were there any sites that were exempted from the requirement?
(d) How many sites were exempted?
(e) Why were they exempted?

7. Maintenance Agreement and Transfer
(a) How many developments subject to post construction BMP requirements and site specific plan requirements actually provided verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and or conditional use permits?
(b) How many of each verification were received?
(c) The developer's signed statement accepting responsibility for maintenance until the responsibility is legally transferred?
(d) A signed statement from the public entity assuming responsibility for Structural or Treatment Control BMP maintenance and that it meets all local agency design standards?
(e) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year?
(f) Written text in project conditions, covenants and restrictions (CCRs) for residential properties assigning maintenance responsibilities to the Home Owners Association for maintenance of the Structural and Treatment Control BMPs?

(g) Written conditions in the sales or lease agreement, which requires the recipient to assume responsibility for maintenance and conduct a maintenance inspection at least once a year?
(h) Another type of legally enforceable agreement that assigns responsibility for the maintenance of post-construction Structural or Treatment Control BMPs?

8. Development Planning Coordination and Enforcement
(a) Did you inspect each new development and redevelopment project for post construction controls prior to approving and signing off for occupancy?
(b) How many?
(c) Were there any sites that were exempted from the requirement?
(d) How many sites were exempted?
(e) Why were they exempted?

9. Regional Storm Water Mitigation Program
(a) Have you applied to the Regional Water Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly for on-site post-construction requirements?

10. Inspection and Tracking System for Post Construction Treatment BMPs
(a) Did you implement the required Geographic Information System (GIS) or other electronic system for tracking projects conditioned for post construction treatment control BMPs?
(b) Does include the following information? (Answer each separately)
(1) Municipal Project ID?
(2) State WDID No.?
(3) Project Acreage?
(4) BMP Type and Description?
(5) BMP Location (GPS coordinates)?
(6) Date of Acceptance?
(7) Date of O&M Certification?
(8) Maintenance Records
(9) Inspection Date and Summary?
(10) Corrective Action?
(11) Replacement or Repair Dates?
(c) Did you inspect all facilities to verify proper maintenance and operation of Treatment BMPs previously approved?
(d) Did you accomplish the following?
(e) BMP acceptance inspection to ensure proper installation?
(1) Inspection once every two years of high priority post-construction BMPs to ensure treatment effectiveness, hydraulic function, and vector risk minimization?

11. Developer Technical Guidance and Information
    (a) List dates as to when the Ventura County Technical Guidance Manual for Stormwater Quality Control Measures was last updated to include the following:
        (1) Hydrologic (Peak Flow) Control criteria for volume control described herein and the interim criteria based on hydrograph matching?
        (2) Expected BMP pollutant removal performance including consistent effluent quality and removal efficiency ranges (International BMP Database, technical reports and the scientific literature?
        (3) Improved Correlation of BMPs with storm water POC?
        (4) Data on Observed Local Effectiveness and performance of implemented BMPs?
        (5) BMP Maintenance and Cost considerations?
        (6) Criteria to facilitate integrated water resources planning and management in the selection of BMPs, including water conservation, groundwater recharge, public recreation, multipurpose parks, open space preservation, and redevelopment retrofits?

12. Project Review and Inter Department Coordination
    (a) Did you ensure that a detailed BMP review was performed including BMP sizing calculations, BMP pollutant removal appropriateness, for each plan submitted with a signed certification?
    (b) How many?
    (c) Were there any sites that were exempted from the requirement?
    (d) How many sites were exempted?
    (e) Why were they exempted?
    (f) Did you ensure that a clear structure for communication and delineated authority are established between and among municipal departments which have jurisdiction over project review, plan approval, project construction, and site maintenance?
    (g) Explain how?

13. California Environmental Quality Act (CEQA) Document Update

    Did you incorporate into the CEQA process procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents? (Answer each below separately.)
    (a) Potential impact of project construction on storm water runoff?
    (b) Potential impact of project post-construction activity on Storm Water runoff?
    (c) Potential for discharge of storm water from areas from material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas?
    (d) Potential for discharge of storm water to impair the beneficial uses of the receiving waters or areas that provide water quality benefit?

(e) Potential for the discharge of storm water to cause significant harm on the biological integrity of the waterways and water bodies?
(f) Potential for significant changes in the flow velocity or volume of Storm Water runoff that can cause environmental harm?
(g) Potential for significant increases in erosion of the project site or surrounding areas?

15. General Plan Update
(a) Was your General Plan amended, revised or updated to include watershed and storm water quality and quantity management considerations and policies when any of the following General Plan elements are updated or amended? (Answer each separately)
(1) Land Use?
(2) Housing?
(3) Conservation?
(4) Open Space?

(b) Did you provide the Regional Water Board with the draft amendment or revision when a listed General Plan element or the General Plan was noticed for comment in accordance with Cal. Govt. Code § 65350 *et seq*?
(c) When?

F. Development Construction Program

1. Did you implement a program to control runoff from construction activity at all construction sites within your jurisdiction to ensure that the following requirements are effectively implemented? (Answer each separately)
(a) For construction projects within or adjacent to an environmentally sensitive area (ESAs), did you prohibit grading between October 1 and April 15?
(b) For construction projects, which include grading on slopes greater than 5:1, that no grading shall occur between October 1 and April 15?
(c) All construction projects, which directly discharge into a sedimentation/ siltation impaired water body and is listed on the CWA §303 (d) list. No grading shall be occurring between October 1 and April 15?
(d) If grading operations were not completed before the rainy season began, was grading halted and erosion control measures put in place to minimize erosion until grading resumes after April 15?

2. Did you require construction site operators to seek separate coverage from the Regional Water Board wherever ground water dewatering may be necessary, is anticipated, or likely?
(a) Small Construction Sites

(1) For each construction site did you require and inspect to ensure that at each construction site, the minimum set of BMPs were implemented to minimize erosion and sediment loss, and prevent pollution from construction waste?

3. For each construction site 1 acre and greater:
   (a) Did you review and approve a Local Storm Water Pollution Prevention Plan (Local SWPPP), for approval prior to issuance of a grading permit for construction projects?
   (b) Did you inspect all construction sites for storm water quality requirements during routine inspections a minimum of once during the wet season?
   (c) Was the Local SWPPP reviewed for compliance with local codes, ordinances, and permits?
   (d) For inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance shall take place within 2 weeks?
   (e) If compliance had not been attained, did the Permittee take additional actions to achieve compliance (as specified in municipal codes)?
   (f) How many?
   (g) For small construction sites one acre and greater (or part of a larger plan of development or sale), did you require, prior to issuing any grading permit, demolition permit, building permit, or construction permit [or any other municipal authorization to move soil and/ or construct or destruct that involves soil disturbance], for all projects requiring coverage under the state general permit, proof of a Waste Discharger Identification (WDID) Number for filing a Notice of Intent (NOI) for coverage under the CASGP and a certification that a SWPPP has been prepared by the project developer?
   (h) Does your agency accept a Local SWPPP as a substitute for the State SWPPP?
   (i) Is the Local SWPPP at least as inclusive in controls and BMPs as the State SWPPP?
   (j) Do you require proof of an NOI and a copy of the SWPPP at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities are still on-going?
   (k) What system do you use to track grading permits issued by your agency?

4. Linear Construction
   (a) Do require for any linear construction project or projects (cumulatively) that will cause one acre or more of soil disturbance but not more than 5 acres that coverage be obtained under the Small Linear Underground/ Overhead Construction Projects General Permit?
   (b) Do you require proof of a Waste Discharger Identification Number (WDID) for filing a Notice of Intent (NOI) for coverage under the and a certification that a SWPPP has been prepared by the project developer, prior to issuing a grading permit, demolition permit building permit, or construction permit (or other authorization to move soil and/ or construct or destruct that involves soil disturbance)?

5. CASGP Violation Referrals
   (a) Did you make any referral of violations of the new development and redevelopment post construction requirements and municipal storm water ordinances to the Regional Water Board?
   (b) Did you make any referral for suspected violations of the CASGP or Linear Permit coverage requirements

G. Public Agency Activities Program

1. Sewage System Maintenance, Overflow, and Spill Prevention
   (a) Did you implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction that clearly identifies agencies responsible and telephone numbers and email for any contact?
   (b) How many overflows did you have?
   (c) How many did you respond to?
   (d) Do you own and/ or operate a sanitary sewer system?

   (e) If so, did you also identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4?
   (f) Did you implement procedures and maintenance schedules to prevent sewage spills or leaks from sewage facilities from entering the MS4?
   (g) If you are a Permittee with septic systems in your jurisdiction, how many do you have?
   (h) Did you implement the following for flows of septic leachate to surface waters within their respective jurisdiction, which shall consist at a minimum of the following:
      (1) Investigation of any complaints received?
      (2) Immediately respond to overflows for containment, upon notification?
      (3) Notification to appropriate agencies and public health agencies when a septic system fails and flows to the MS4?

2. Public Construction Activities Management
   (a) Did you comply with all the Development Planning Program requirements in at public construction projects?
   (b) Did you comply with all the Development Construction Program requirements at Permittee owned or operated construction sites?
   (c) Did you obtain coverage under the CSWGP for all construction activities for (non linear) capital improvement project(s), or contracts, that individually or cumulatively equals or surpass the 1 acre land disturbance threshold?
   (d) Did you obtain coverage under the Statewide General Permit for Storm water Discharges Associated with Construction Activity from Small Linear Underground/ Overhead Projects (Small LUP General Permit) for Small Linear

Underground/ Overhead Projects disturbing at least 1 acre, but less than 5 acres (including trenching and staging areas)?

3. Vehicle Maintenance/ Material Storage Facilities/ Corporation Yards Management.

(a) Did you implement the required BMPs for each maintenance yard and activity specified in the tables Permittee shall implement the following BMPs at all Permittee owned, leased facilities including but not limited to vehicle/ equipment maintenance facilities, material storage facilities, and corporation yards, and at any area that includes the activities as described in the tables below. Answer each separately.

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Nonlandscaped Mechanical Vegetation Control/Mowing	B-23
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(b) Are all of your existing facilities that are not plumbed to the sanitary sewer with vehicle and equipment washing areas:
  (1) Self-contained? How many?
  (2) Equipped with a clarifier? How many?
  (3) Equipped with an alternative pre-treatment device? How many?
  (4) To be plumbed to the sanitary sewer? How many? When?
    (A) Are all new facilities, or during redevelopment of existing facilities (including fire stations), all vehicle and equipment wash areas to be plumbed to the sanitary sewer and be equipped with a pre-treatment device in accordance with requirements of the sewer agency? If not state why.

4. Landscape and Recreational Facilities Management

Control Program for Registered Pesticides

(a) Did you adopt and implement policies, procedures, and/ or ordinances requiring the minimization of pesticide use and the use of integrated pest management (IPM) techniques in your operations and on municipal property?
(b) What was your previous year's pesticide use? Answer in gallons or pounds for each type used.
(c) Using estimated projections, what is your expected use this coming fiscal year? Answer in gallons or pounds for each type used.
(d) Do you have commitments to reduce or phase-out, and ultimately eliminate use of pesticides that cause impairment of surface waters? State for each, by when.
(e) Describe your Integrated Pesticide Management (IPM) program.
(f) Attach the program elements.
(g) Did you comply with the following requirements:?
  (1) Use a standardized protocol for the routine and non-routine application of pesticides, herbicides (including pre-emergents), and fertilizers?
  (2) Ensure no application of pesticides or fertilizers immediately before, during, or immediately after a rain event or when water is flowing off the area to be applied?
  (3) Ensure that no banned or unregistered pesticides are stored or applied?
  (4) Ensure that all staff applying pesticides are certified by the California Department of Food and Agriculture, or are under the direct supervision of a certified pesticide applicator?
  (5) Implement procedures to encourage retention and planting of native vegetation and to reduce water, fertilizer, and pesticide needs?
  (6) Store fertilizers and pesticides indoors or under cover on paved surfaces or use secondary containment?
    (A) Reduce the use, storage, and handling of hazardous materials to reduce the potential for spills?
    (B) Regularly inspect storage areas to ensure no environmental harm?

5. Storm Drain Operation and Management

Catch Basin Cleaning

(a) How many catch basins did you designate as one of the following:
   Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/ or debris?
   Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/ or debris?
   Priority C: Catch basins that are designated as generating low volumes of trash and/ or debris?
(b) Did you clean all catch basins according to the following schedule?:
   Priority A: A minimum of three times during the wet season and once during the dry season every year? How many?
   Priority B: A minimum of once during the wet season and once during the dry season every year? How many?
   Priority C: A minimum of once per year? How many?
(c) Did you ensure that any catch basin that is at least 25% full of trash and/ or debris was cleaned out? How many?

   For each type of catch basin (A, B, or C) state how much trash and debris was collected and state the units (wet tons, dry pounds, etc…)
   (1) Did you require for any special event that they arrange for temporary screens to be placed on catch basins or for catch basins in that area to be cleaned out subsequent to the event and prior to any rain event? How many events did this apply to?
   (2) How much trash and debris was collected? (wet tons, dry pounds, etc…)

Trash Controls

(a) Did you install trash receptacles at transit stops as required?
(b) How many?
(c) How much trash and debris was collected? (wet tons, dry pounds, etc…)
(d) Did you install trash excluders, or similar devices upon catch basins to prevent the discharge of trash to the storm drain system?
(e) How many?
(f) How much trash and debris was collected? (wet tons, dry pounds, etc…)

Catch Basin Labels

(a) Did you inspect the legibility of the catch basin label by all inlets?
(b) How many?
(c) Were catch basins with illegible stencils shall be recorded and re-stenciled or re-labeled within 180 days of inspection?
(d) How many were recorded?
(e) How many were relabeled?

Storm Drain Maintenance

(a) Did you inspect all Permittee-owned open channels and other drainage structures for debris and identify and prioritize problem areas of illicit discharge for regular inspection?
(b) Do your maintenance activities assure that appropriate storm water BMPs are being utilized to protect water quality?
(c) Did you remove trash and debris from open channel storm drains before the storm season?
(d) Did you minimize the discharge of contaminants during MS4 maintenance and clean outs?
(e) How?
(f) Did you properly dispose of material removed?
(g) How much trash and debris was collected? (wet tons, dry pounds, etc…)
(h) Have you obtained coverage under the CASGP for Long-term maintenance programs for flood control channels (such as vegetation removal) if one or more acres of soil are disturbed by grading, clearing or excavation activities for an individual project or as part of several projects part of the Permittee's long-term maintenance plan?
(i) How many projects?
(j) Which projects?
(k) Were all municipally owned treatment control BMPs as maintained as necessary to ensure optimal pollutant reduction?
(l) Was any pooled water shall be discharged to the sanitary sewer system?
(m) Was any of the pooled water treated to remove pollutants and discharged to the storm drain?
(n) Was every discharge monitored to ensure compliance?

6. Streets and Roads Maintenance
   (a) Did you conduct street sweeping of curbed streets in commercial areas to control trash and debris at least 2 times per month?
   (b) How much trash and debris was collected? (wet tons, dry pounds, etc…)
   (c) Did you obtain coverage under the CASGP for long-term maintenance programs for roadside maintenance (such as: vegetation removal) if 1 or more acres of soil are disturbed including: grading, clearing or excavation activities that disturb 1 or more acres of land either for an individual project or as part of a long-term maintenance plan?

7. Parking Facilities Management
   (a) Were all Permittee-owned parking lots exposed to storm water cleaned to be kept clear of debris and excessive oil buildup and cleaned no less that 2 times per month?
   (b) How much trash and debris was collected? (wet tons, dry pounds, etc…)

8. Public Industrial Activities Management
   (a) Did you obtain separate coverage under the IASGP for any municipal activity subject to it for the discharge of storm water associated with industrial activity?
   (b) For how many facilities?
   (c) Which facilities?

9. Municipal Drinking Water System Discharges
   (a) From your municipal drinking system did you maintain the system by flushing hydrants or other fixtures?
   (b) How many gallons total were discharged in the year?
   (c) If the discharges in an annual period were less than 100,000 gallons for the entire city did you implement a BMP or suite of BMPs to ensure that the chlorine level of the discharge is 0.1mg/L or less?
   (d) Did you sample or take a test every time to ensure dechlorination of the water to 0.1mg/L or less?
   (e) Did you ensure that the BMP or suite of BMPs were implemented so that no erosion is caused by the discharge of the potable water?
   (f) What BMPs were implemented?

10. Emergency Procedures
   (a) Were there any emergencies that caused the Permittee to invoke this section? Explain the situation.

11. Municipal Employee (and municipal contractor) Training
   (a) Did you train all of your employees in targeted positions regarding the requirements of the overall storm water management program?
   (b) Did you promote a clear understanding of the potential for activities to pollute storm water?
   (c) Did they learn to identify opportunities to require, implement, and maintain appropriate BMPs in their work?
   (d) Did they learn the appropriate ways of identification, investigation, termination, cleanup, and reporting of illicit connections and discharges?
   (e) Will they ensure that the requirements of this Order are met?
   (f) For those employees or contractors who use or have the potential to use pesticides (whether or not they normally apply pesticides as part of their work), which includes pesticides available over the counter, did you address the potential for pesticide-related surface water toxicity?
   (g) Proper use, handling, and disposal of pesticides?
   (h) Least toxic methods of pest prevention and control?
   (i) Encourage the use of IPM?
   (j) Require the quantifiable reduction of pesticide use?
   (k) Training - All Permittees shall train all targeted employees who are responsible for on an annual basis. In public agency?

H. Illicit Connections/ Illegal Discharge Program

1. IC/ ID Program
   (a) Did you implement an IC/ ID Program?
   (b) The IC/ ID Program must be documented and available for review.
   (c) Did you map all permitted connections to the storm drain system?
   (d) Did you map all illicit connections and discharges on baseline maps?
   (e) Did you transmit this information to the Principal Permittee?
   (f) Did you use this mapping information to identify priority areas for further investigation?
   (g) Did you eliminate all known illicit connections and illicit discharges?

2. Public Reporting
   (a) Did you establish and maintain a phone hotline to receive illicit discharge/ connection complaints?
   (b) Did you establish and maintain an internet homepage to receive illicit discharge/connection complaints?
   (c) For all complaints received, did you document the location of the illicit discharge/ connection?
   (d) Have you documented the actions undertaken in response to all illicit discharge/ connection complaints?

3. Illicit Connections

   Screening for Illicit Connections
   (a) Did you conduct field screening of your storm drain system for illicit connections?
   (b) For those portions of the storm drain system consisting of storm drain pipes 36 inches in diameter of greater, how many miles did you field screen this year?
   (c) Out of how many miles total?
   (d) Did you conduct field screening for high priority areas identified during the mapping of illicit connections and discharges?
   (e) How many miles were completed this year?
   (f) Out of how many miles total?
   (g) How much of the storm drain system that is 50 years or older in age did you field screen?
   (h) Out of how many miles total?
   (i) Did you submit to the Principal Permittee a GIS layer showing the location and length of underground pipes greater than 18” in diameter and channels within their jurisdiction?
   (j) Did you also include the status of suspected, confirmed, and terminated illicit connections?
   (k) Did you maintain a list containing all connections under investigation for possible illicit connection and their status?

(l) Did you attach that list to this Annual Report?

Response to Illicit Connections

(a) Did you complete an investigation within 21 days of notice of a suspected illicit connection?
(b) Did you determine the Source of each connection?
(c) Did you determine the nature and volume of discharge through the connection?
(d) Did you identify the responsible party of the connection?
(e) How many suspected illicit connections were there this year?
(f) Upon confirmation of the illicit nature of a storm drain connection did you terminate the connection within 180 days of completion of the investigation?
(g) Did you document all illicit connection discoveries and your response to each?

4. Illicit Discharges
   (a) Abatement and Cleanup
      (1) Did you respond and cleanup within 1 business day of discovery or of receiving a report of a suspected illicit discharge?
      (2) Did you keep records of all illicit discharge discoveries, reports of suspected illicit discharges and their response to the illicit discharges and suspected illicit discharges?
      (3) How many did you receive?
      (4) How many did you respond to?

   (b) Investigation
      (1) Did you investigate illicit discharges during or immediately following containment and cleanup activities, and take enforcement action as appropriate?

SB-AR-251
A-2023
VI

State Water Resources Control Board

Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

June 12, 2009

[via U.S. Mail and email]
Andrew R. Henderson, Esq.
Building Industry Legal
Defense Foundation
1330 South Valley Vista Drive
Diamond Bar, CA 91765
Andrew@biasc.org

Dear Mr. Henderson:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: ACKNOWLEDGMENT OF PETITION RECEIVED
SWRCB/OCC FILE A-2023

This will acknowledge receipt of your petition. For summary of information, please see table below:

SWRCB/OCC FILE NO. *(please use on all future correspondence)*	A-2023
PETITION RECV'D BY SWRCB	06-08-09
PETITIONER(S)	Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and Building Industry Association of Southern California, Inc.
DISCHARGER(S) *(if not the petitioner)*	County of Ventura and the Incorporated Cities Therein
RWQCB	Los Angeles RWQCB
RWQCB ACTION/INACTION BEING PETITIONED	Waste Discharge Requirements Order No. R4-2009-0057 [NPDES No. CAS004002] for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from The Municipal Separate Storm Sewer Systems Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein

STAY REQUESTED	Yes
NPDES NO. *(if applicable)*	CAS004002
DATE OF ACTION OR INACTION	05-07-09

If you would like to receive future information electronically, please send your email address to jbashaw@waterboards.ca.gov and include our **SWRCB/OCC File A-2023** in the subject line. Correspondence will also be sent in hard copy to those persons whose addresses appear on this letter. You will be notified of further action by the State Water Resources Control Board on this matter.

IN ALL FUTURE CORRESPONDENCE, PLEASE REFER TO SWRCB/OCC FILE A-2023

Sincerely,

Sheila Vassey for

Elizabeth Miller Jennings
Staff Counsel IV

cc: Mr. Michael Lewis **[via U.S. Mail]**
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West Covina, CA 91791

Andrew R. Henderson, Esq. **[via U.S. Mail]**
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[via U.S. Mail and email]
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Continued next page

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A-2023

SB-AR-255

State Water Resources Control Board

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Arnold Schwarzenegger
Governor

JUN 24 2009

CERTIFIED MAIL & EMAIL

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Dear Mr. Henderson:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: NOTIFICATION OF DISMISSAL OF STAY REQUEST WITHOUT PREJUDICE
SWRCB/OCC FILE A-2023

This office has reviewed a stay request in the above-referenced petition and determined that the stay request is incomplete for the reasons listed below. (See Cal. Code Regs., tit. 23, § 2053.) The stay request is therefore dismissed without prejudice. To re-file the stay request, please address all of the requirements that are checked below.

☑ The request must be supported by affidavit (declaration) of a person having knowledge of the facts alleged. The affidavit must explain the facts that support the stay request.

☑ The request must allege facts that show all of the following:

1. Substantial harm to petitioner or to the public interest if a stay is not granted;

2. A lack of substantial harm to other interested persons and to the public interest if a stay is granted; and

3. Substantial questions of fact or law regarding the disputed action.

☑ The facts alleged and the declaration must explain actions that will occur or costs that will be incurred during the time that the State Water Resources Control Board will review the petition. The documents submitted discuss the merits of the regional board order and do not support the need for interim relief.

If you have any questions regarding this letter, please contact me at (916) 341-5169 or CALNET 8-471-5169.

Sincerely,

Marleigh J. Wood
Senior Staff Counsel

cc: Mr. Michael Lewis **[via U.S. Mail]**
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A-2023

SB-AR-259

State Water Resources Control Board

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Arnold Schwarzenegger
Governor

July 2, 2009

CERTIFIED MAIL & EMAIL

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Dear Mr. Henderson:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: COMPLETE PETITION (30-DAY RESPONSE)
SWRCB/OCC FILE A-2023

Your above-referenced petition is complete and the State Water Resources Control Board will begin its review.

The Los Angeles Water Quality Control Board (Los Angeles Water Board) and other interested persons may file a written response to the petitions. Responses are due within 30 days of the date of this letter, addressed to my attention. In addition, all responses must be sent to the Petitioner at the address listed above, and to the Los Angeles Water Board. Copies of the petition should be obtained from the Petitioner at the address listed above.

The Los Angeles Water Board is requested to file the administrative record (copied on one side) within this 30-day period.

IN ALL FUTURE CORRESPONDENCE, PLEASE REFER TO
SWRCB/OCC FILE A-2023
AND SUBMIT COPIES TO
PETITIONER(S) & THE RWQCB

Future correspondence regarding this matter will be sent in hard copy only to the addressees of this letter and to those persons whose names and addresses appear on this letter as receiving copies. Interested persons (including those who received this letter via e-mail) will not receive future correspondence unless they either (1) subscribe

to the electronic mailing list named "A-2023 Building Industry, et al. [Ventura Co. MS4]" on the internet at: http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml to receive future correspondence via e-mail or (2) request to receive future correspondence in hard copy by writing to Gabrielle Kolitsos at the Office of Chief Counsel at the address in the letterhead above. You should act as soon as possible to ensure you receive all items of future correspondence.

The Petitioner may not file a response to the petition. Additional submissions regarding this petition will only be allowed upon written request and approval of such requests is at the discretion of this Board.

If you have any questions regarding this letter, please contact me at (916) 341-5169 or CALNET 8-471-5169.

Sincerely,

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STATE WATER RESOURCES CONTROL BOARD

In the Matter of: California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Storm Water National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002	SWRCB/OCC File No. A-2023 SUPPLEMENTAL REQUEST FOR IMMEDIATE STAY Cal. Code Regs. Title 23, § 2053

Pursuant to California Water Code Section 13321 and Section 2053 of Title 23 of the California Code of Regulations, Building Industry Legal Defense Foundation ("BILD"), the Construction Industry Coalition on Water Quality ("CICWQ"), and Building Industry Association of Southern California, Inc. ("BIA/SC"), (collectively, "Petitioners") hereby seek a stay of the order and final decision of the California Regional Water Quality Control Board, Los Angeles Region (the "Regional Board") concerning its approval of the Ventura County municipal separate storm sewer system permit.

By their Petition filed on June 8, 2009 (which has been assigned SCWRB/OCC File No. A-2023, hereinafter the "Petition"), Petitioners have challenged the Regional Board's approval Order No. R4-2009-0057, NPDES No. CAS004002, entitled "Waste Discharge Requirements for Storm Water Discharges from the Municipal Separate Storm Sewer System within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein" (the "Permit" or the "Ventura Permit").

The Ventura Permit was approved by the Regional Board on May 7, 2009, following a bewildering public hearing at which the Regional Board rejected entire sections of the tentative permit that was duly publicized for public comment, a replaced those sections with sweeping, new and different provisions that were untimely proposed prior to the hearing. The Regional Board's staff thereafter needed longer than three weeks to publicize the Ventura Permit in its final form – on June 2, 2009 (less than one week before the filing deadline to petition this Board).

Petitioners respectfully request that any application of the Ventura Permit be stayed pending resolution of this matter, for the following reasons:[1]

1. Petitioners and the Public Interest Will be Substantially Harmed If a Stay is Not Granted.

As the accompanying Declaration of Dr. Mark Grey, Technical Director of CICWQ,

[1] By letter dated June 24, 2009, the State Board's Office of Chief Counsel issued a notification of the dismissal of Petitioners' original stay request without prejudice, citing the Petitioners' need to comply with the requirements of Cal. Code Regs. Tit. 23, § 2053. The instant Supplemental Request for Stay and the accompanying Declaration of Dr. Mark Grey in Support of Petitioners' Supplemental Request for Stay fulfill those requirements.

explains, allowing the Ventura Permit to operate without a stay will substantially harm Petitioners and the public at large. Land use planners and property owners would need to radically amend their land use planning efforts to conform to the radically new and untenable on-site storm water retention mandates reflected in the Ventura Permit, at tremendous cost in terms of wasted spending and planning efforts. If the Ventura Permit is ultimately shown to have been issued improperly and is substantively untenable (as Petitioners anticipate), then Ventura County land use planners, property owners, and developers (including the members of Petitioners' organizations) would need to *yet again* alter their land use planning efforts to return to the *status quo ante* – which is a relatively reasonable land use construct.

As the accompanying Declaration of Dr. Mark Grey explains at greater length, very recently, more than 11,000 housing units were pending approval in Ventura County, with thousands more in early planning stages not yet formally pending approval. In addition, there are perhaps hundreds of non-residential projects pending approval or being planned in Ventura County. Throwing these projects and the related planning into disarray while the instant Petition is resolved would result in perhaps millions of dollars of waste efforts.

Moreover, the State Board should not place Petitioners or the people of Ventura County in a position of pursuing potential harm to the environmental and physical resources of Ventura County which could result from compliance with the Ventura Permit. As the Declaration of Dr. Mark Grey explains, adherence to the Ventura Permit's on-site storm water retention requirements could have anecdotally harmful environmental impacts.

2. <u>There Shall Be No Harm to Other Interested Persons and to the Public Interest if a Stay is Granted.</u>

Also as is explained in the accompanying Declaration of Dr. Mark Grey, no other party or interest would be substantially harmed as a result of a stay until such time as the Petition is considered by the State Board (and, if and to the extent necessary, any judicial review), ruled upon on the merits, and either set aside or upheld. Staying the implementation of the Ventura Permit – and especially the land use provisions thereof (Section E. Planning and Land Development Program), would maintain the *status quo ante* and, importantly, merely delay (assuming the

Petition and any subsequent adjudication uphold the Ventura Permit) the regulated community's obligation to pursue on-site storm water retention requirements that are novel, untested, contrary to established law and practices, and impracticable in their application in many contexts. Indeed, only those members of the public who would relish seeing wasted efforts and confusion in the land planning process would insist upon denial of the requested stay concerning – most especially – the land use provisions of the Ventura Permit pending final adjudication of them.

3. There are Substantial Questions of Fact or Law Regarding the Ventura Permit.

Along with the Petition, Petitioners filed, on June 8, 2009, their Memorandum of Points and Authorities in Support of Issues Set Forth in Petition for Review of Ventura County Municipal Separate Storm Sewer Permit System (the "P&As"). The P&As, which Petitioners hereby incorporate herein by reference, set forth numerous substantial questions of fact and law regarding the issuance of the Ventura Permit.

The accompanying Declaration of Dr. Mark Grey avers to that accuracy of the facts alleged in the Petition and the P&As, based on his personal knowledge of the facts leading to issuance of the Ventura Permit and the technical, land use issues underlying the Ventura Permit, his information and belief concerning the same, and his expert scientific opinion concerning the implications of the land use provisions set forth in the Ventura Permit.

4. Statement Concerning Distribution of Copies of this Supplemental Request and Accompanying Declaration of Dr. Mark Grey:

Petitioners have sent by electronic mail a copy of this Supplemental Request to the Regional Board and to the dischargers (i.e., the Permittees), both directly and by and through the legal counsel to the Principal Permittee (the consortium of all Permittees). Specifically, a copy of this Supplemental Request and accompanying documents were sent to the following persons:

a) Mr. Gerhardt Hubner, Ventura Countywide Stormwater Quality Management Program, Gerhardt.Hubner@ventura.org

b) Tess Dunham, Special Counsel to Ventura Countywide Stormwater Quality Management Program, tdunham@somachlaw.com

c) Norma Camacho, Ventura County Watershed Protection District,

Norma.Camacho@ventura.org

d) Arne Anselm, Ventura County Watershed Protection District, arne.anselm@ventura.org

e) Jerry Bankston, City of Camarillo, jbankston@ci.camarillo.ca.us

f) Mike Sedell, City of Simi Valley, msedell@simivalley.org

g) Wally Bobkiewicz, City of Santa Paula, wbobkiewicz@ci.santa-paula.ca.us

h) Dave Norman, City of Port Hueneme, dnorman@ci.port-hueneme.ca.us

i) Edmund Sotelo, City of Oxnard, Edmund.Sotelo@ci.oxnard.ca.us

j) Jere Kersnar, City of Ojai, kersnar@ci.ojai.ca.us

k) Marty Robinson, City of Ventura, Marty.Robinson@ventura.org

l) Mohammed A. Fatemi, City of Thousand Oaks, mfatemi@toks.org

m) Rick Cole, City of Ventura, rcole@ci.ventura.ca.us

n) Scott Mitnick, City of Thousand Oaks, SMitnick@toaks.org

o) Steven Kueny, City of Moorpark, skueny@ci.moorpark.ca.us

p) Bill Bartels, City of Fillmore, bbartels@ci.fillmore.ca.us

q) Deborah Smith, California Regional Water Quality Control Board, Los Angeles Region, dsmith@waterboards.ca.gov

r) Tracy Woods, California Regional Water Quality Control Board, Los Angeles Region, twoods@waterboards.ca.gov

s) Joanne Kelly, California Regional Water Quality Control Board, Los Angeles Region, jkelly@waterboards.ca.gov

t) Tracy Egoscue, California Regional Water Quality Control Board, Los Angeles Region, tegoscue@waterboards.ca.gov

u) David Bacharowski, California Regional Water Quality Control Board, Los Angeles Region, dbacharowski@waterboards.ca.gov

v) Elizabeth Miller Jennings, Esq., Office of the Chief Counsel (State Board), bjennings@waterboards.ca.gov

w) Doug Eberhardt, U.S. EPA Region 9, eberhardt.doug@epa.gov

x) Michael Levy, Esq., Office of the Chief Counsel (State Board), mlevy@waterboards.ca.gov

y) Jennifer L. Fordyce, Esq., Office of the Chief Counsel (State Board), jfordyce@waterboards.ca.gov

z) Jeffery M. Ogata, Esq., Office of the Chief Counsel (State Board), jogata@waterboards.ca.gov

Dated: July 7, 2009

Respectfully submitted,

BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION

By _____
Andrew R. Henderson
Attorney for Petitioners
Building Industry Association
of Southern California, Inc.

Building Industry Legal Defense Foundation
Andrew R. Henderson (Bar No. 151365)
1330 S. Valley Vista Drive
Diamond Bar, California 91765
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Attorney for Petitioners
BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.,

STATE WATER RESOURCES CONTROL BOARD

In the Matter of: California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002	SWRCB/OCC File No. A-2023 DECLARATION OF DR. MARK GREY IN SUPPORT OF PETITIONERS' SUPPLEMENTAL REQUEST FOR IMMEDIATE STAY Cal. Code Regs. Title 23, § 2053

I, Mark A. Grey, Ph.D., declare as follows:

1. I have personal knowledge of the matters set forth in this declaration, and in the Petition (the "Petition") and accompanying Memorandum of Points and Authorities filed on June 8, 2009, by the Building Industry Legal Defense Foundation ("BILD"), the Construction Industry Coalition on Water Quality ("CICWQ"), and Building Industry Association of Southern California, Inc. ("BIA/SC"), (collectively, "Petitioners"). I make this declaration in support of the Petitioners' Supplemental Request for Immediate Stay.

2. The statements herein are based on my in-depth personal knowledge of the matters related to development, over several years, and the eventual issuance by the Los Angeles Regional Water Quality Control Board (the "Regional Board") of its Order No. R4-2009-0057, NPDES No. CAS004002, entitled "Waste Discharge Requirements for Stormwater Discharges from the Municipal Separate Storm Sewer System within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein" (the "Permit" or the "Ventura Permit"), as well as my information and belief related thereto, and my expert opinion as a professional scientist. If called upon to testify, I could and would competently do so.

3. I am the Director of Environmental Affairs of BIA/SC and the Technical Director of CICWQ, where I have been in continuous employment since June 2006. My business address is 1330 S. Valley Vista Drive, Diamond Bar, California, 91765, Telephone (909) 396-9993. In 1999, I received a Ph.D. in soil chemistry from the University of Washington in Seattle, Washington. I am a recognized expert on matters related to the application of soil science and hydrology to development projects.

4. For more than three years, I have been nearly exclusively involved professionally in matters related to stormwater regulations concerning the construction industry in California, and particularly in southern California. In doing so, I have diligently studied (on an ongoing basis) evolving regulatory proposals concerning stormwater management and their relationship to the development and construction industries. For example, I have led, and continue to lead, the technical efforts of the California Building Industry Association concerning the ongoing

regulatory efforts through the State Board to renew the Construction General Permit for Stormwater Discharges (NPDES permit). In addition, since 2006, I have been the principle technical expert for certain development and construction industry trade associations in California, responsible for reviewing and commenting upon proposed MS4 permits under consideration throughout southern California.

5. I am familiar with the evolution and development of the proposed provisions set forth in various earlier drafts of what eventually became the Ventura Permit. Specifically, I was deeply involved in reviewing and commenting upon all four tentative versions of what eventually became the Ventura Permit, which were published for public comment. I have met repeatedly with the Regional Board's staff over the last several years to discuss their proposals and the implications thereof.

6. Based upon the above, the statements that follow set forth (i) the harm to Petitioners and to the public interest (including actions that will occur and costs that will be incurred) if the stay that Petitioners are requesting is not granted; (ii) the lack of substantial harm to other interested person and the public interest if a stay is granted, particularly as relates to the land use provisions of the Ventura Permit (Section E. Planning and Land Development Program); and (iii) the existence of numerous substantial questions of fact and law regarding the Ventura Permit.

7. Concerning the harm to Petitioners and the public interest if the State Board were to deny the requested stay, the Ventura Permit's land use provisions would constitute a radical paradigm shift concerning how development sites are designed and stormwater is managed as compared to current practices. Specifically, the Ventura Permit's land use provisions would effectively prohibit the discharge across property boundaries of almost all stormwater generated from most rain events (i.e., the 85th percentile, 24-hour storm event or smaller). This would effectively and substantially curtail existing practices that (a) use municipal storm drain systems and water quality protection measures, and (b) better allow for land uses to be designed which mimic pre-development hydrology. Stormwater that would, but for the provisions in the Ventura Permit, have flowed from a property in a manner consistent with the pre-construction condition will

instead be required to be substantially retained at the site, possibly harming the downstream environment that will then be denied the stormwater that would otherwise flow away from the site. The potential for harm to areas that would, but for the provisions of the Ventura Permit, receive the natural or (by design) maintained flow of stormwater could render many sites effectively undevelopable.

8. Unless a stay is granted, land planners, land owners, builders and contractors who are active in Ventura County will have to immediately begin altering their planning methodologies to comport with the land use provisions of the Ventura Permit. The Permit makes stormwater capture and on-site retention – uncritically and without regard to context – a controlling factor in land use planning in Ventura County. In other words, a potential developer would need to undertake an expensive and time consuming technical and economic feasibility analysis to evaluate whether or not infiltration, harvest and use, or evapotranspiration can be accommodated at the site regardless of the context of the project. Ventura County planners and engineers would require immediate training concerning the Ventura Permit's new and untested land use provisions, costing countless hours and, at a minimum, hundreds of thousands of dollars. Attention would need to be turned promptly to the potential environmental effects (both on-site and off-site) that would result from a mandate to capture and permanently retain most stormwater falling on implicated sites. According to the 2009 Real Estate and Economic Outlook for Ventura County, more than 11,000 housing units alone are pending approval in Ventura County. In addition, there are thousands more housing units, and at least hundreds of non-residential projects, presently in the planning stages in Ventura County but not yet formally "pending approval."

9. The permit requirement for infill and redevelopment are particularly upending of current planning and development practices, and would require plans in progress to be set aside or scrapped in favor of new planning aimed at meeting the Ventura Permit's new land use requirements. Specifically, the requirements would discourage, rather than encourage, infill development by severely limiting redevelopment and in-fill development possibilities, by imposing a rigid 30% "effective impervious area" (EIA) cap on all infill and redevelopment

projects. This will harm project applicants, because suddenly a developer will need to prepare a detailed and costly technical feasibility analysis to determine whether the 30% EIA cap can be achieved at the site. If not, the project would be prohibited; or it would need to be radically redesigned, potentially stranding investments and sinking projects.

10. For projects in Ventura County which would not be subject to the 30% EIA limit applicable to urban development and in-fill, all other projects would be limited to an even more draconian 5% EIA limitation, which both (i) requires capture and permanent retention of stormwater to be infiltrated, harvested and used, or evapotranspirated, and (ii) if and to the extent such a requirement could not be met feasibly at the site, requires the developer to pay or otherwise make provisions for capturing and retaining stormwater at some other location(s) using LID measures (using just the measures of infiltration, harvest and use, or ET), while still being required to treat all stormwater falling on the development site consistent with the Permit's water quality requirements. Petitioners and their members are harmed because developers will have to pay twice to address the same volume of water (once on-site, and again off-site). The petitioner is also harmed because, in existing urban areas that are being redeveloped, suitable storm drain systems are already in place, which receive runoff.

11. If, and to the extent, the Petition is meritorious, the State Board's refusal to grant a stay would result in incalculable but extremely large societal and collective costs, mostly borne by the private and public entities that are presently planning projects for development.

12. Objectively, no substantial harm would befall any other interested person or the public interest if the State Board were to grant the stay requested by Petitioner, particularly as concerning the Ventura Permit's land use provisions. Granting the stay would merely maintain the *status quo ante* concerning land use planning. To that end, the State Board may wish to consider specifying that the land use provisions set forth in the predecessor permit should be maintained.

13. Given that the Ventura Permit's land use provisions would constitute a radical departure from past and present practices, a planning and administrative upheaval would occur – not once, but twice – if the State Board were to (i) deny the stay requested by Petitioners, and then (ii) hear

the Petition and grant the procedural and/or substantive relief otherwise sought by Petitioners. Such a scenario would cause those public and private entities involved in land use planning and approvals to have to act twice – once toward the requirements set forth in the Ventura Permit's land use provisions, and then a second time back away from those requirements. Obviously, this would result in a tremendous amount of wasted work and tremendous, albeit incalculable cumulative expense. I would be safe to assume, however, that the direct costs would be in the millions of dollars, while the financial costs of carrying projects for extended periods of time (as plans were revised repeatedly) would be similarly in the many millions of dollars.

14. Given these facts, objectively, no one would be interested in the denial of Petitioners' requested stay – especially as applies to the Ventura Permit's land use provisions – unless that person were interested in creating unnecessary chaos for the public and private interests that deal with land use planning.

15. I have reviewed, and indeed participated in the drafting of, the Petition and Petitioners' Points and Authorities in support thereof, each of which were filed with the State Board on June 8, 2009. Those documents set forth numerous, important questions of fact and law regarding the Regional Board's approval of the Ventura Permit. All of the factual representations set forth in both the Petition and its accompanying Points and Authorities are true and correct, to the best of my knowledge. Rather than recite each one here, I hereby incorporate all such factual representations here by reference generally and *in toto*.

16. Moreover, there are numerous substantial questions of a scientific or technical nature that are raised by the Ventura Permit, which should be addressed in connection with the Petition. For example, not all properties are suited for stormwater infiltration, harvest and use, and/or evapotranspiration (which, in simple terms, is a pond lacking any outflow other than evaporation). The imposition of such a requirement will frequently conflict with local conditions. The permit does not allow the implementation of "low impact development" (LID) techniques that would *mimic*, as closely as possible, predevelopment hydrology. Thus, the Ventura Permit would conflict with a most basic tenet of LID concepts. An absolute on-site retention standard moves

away from the goal to mimic predevelopment hydrology to a goal of absolute control without regard to other environmental consequences.

17. On-site retention specifically for the "harvest and use" of substantial volumes of stormwater requires a site-by-site consideration of water demand management. It would be wasteful for consumers (for example, homeowners) to be forced to deal with the additional operating and maintenance costs for stormwater harvesting and use systems when large-scale, efficient recycled water and potable water sources are available, and in some cases, already underutilized (specific to recycled water).

18. Moreover, the aim of harvesting and using stormwater, as proposed in the Ventura Permit, ignores the eventuality that back-to-back rainfall events will occur close in time. When they do, computer modeling shows that the requirements set forth in the Ventura Permit will result in more untreated stormwater runoff (when compared to LID treatments that filter stormwater for discharge from the parcel more in accordance with pre-development hydrology). Therefore, there are demonstrable water quality benefits that would be gained by rejecting the Ventura Permit and instead embracing the full suite of LID practices.

19. There will, in many contexts, be negative consequences for receiving waters that serve as habitat if the Ventura Permit is allowed to stand, and developers are forced not to try to mimic pre-development hydrology within reasonable tolerances. Specifically, requiring the on-site retention for infiltration, harvest and use, and/or evapotranspiration of nearly all the 85th percentile, 24-hour rain event may lead to permanent and damaging effects to drainage areas that would receive stormwater runoff but for the Ventura Permit requirements. An example would be the potential to alter substantially aquatic and riparian habitat due to the changes to ephemeral drainages that could result when more constant in-stream flow is created via the purposeful (on-site) introduction of stormwater into the shallow ground water aquifer.

20. A mandate to harvest and use stormwater may conflict with a local water agencies capacity and need to use reclaimed water in the absence of any clear requirement for this type of analysis, which the adopted permit does not expressly contain. A property owner may have to install and

maintain a costly and expensive system to supply water for use that is orders of magnitude more expensive that accepting water from an established purveyor of recycled water. The Regional Board refused to consider this or any other issue related to the economic considerations of the on-site retention requirement.

21. The Ventura Permit would apply an arbitrary <30% EIA requirement for infill and redevelopment projects, although such a factor has no basis in scientific fact. The value of "30%" is unsupported in the scientific literature or established regulatory rulemaking record. The 5% EIA standard for new development is also in conflict with established technical facts. Specifically, the use of EIA as a "standard" is inconsistent with its scientific development as a *watershed-level* "indicator" – not a site-by-site project-level engineering design standard.

22. Lastly, the Venture Permit seemingly violates a "natural flow doctrine," which I am informed is a millennia-old legal construct that (like the LID principle that seeks to mimic, within reasonable tolerances) values the maintenance of natural stormwater flows. For that reason, Petitioners have argued, and will continue to demonstrate, that the on-site retention concept in the Ventura Permit should be rejected.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is signed this 7th day of July, 2009, at Diamond Bar, California.

Mark A. Grey

NRDC
THE EARTH'S BEST DEFENSE

Heal the Bay

Via Email and U.S. Mail

July 13, 2009

Marleigh Wood
Senior Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

Dear Ms. Wood:

On behalf of the Natural Resources Defense Council and Heal the Bay, I hereby request an extension of time to respond to the petition of the Building Industry Legal Defense Foundation et al. ("Petitioners") in the matter of SWRCB/OCC File A-2023 (Ventura County Municipal Stormwater Permit Appeal).

Given the nature of the petition and the extensive false claims made by the Petitioners regarding the circumstances surrounding the adoption of the Low Impact Development ("LID") provisions of the Ventura County Municipal Stormwater Permit (Order No. R4-2009-0057 [NPDES No. CAS 004002]), we believe a thorough evaluation of the record is necessary in order to provide us adequate opportunity to respond to such claims. Indeed, Petitioners' repeated references to an alleged "secret agreement" between the environmental community and the discharger—while wholly misplaced—are at the core of Petitioners' argument. We believe our ability to respond meaningfully to such allegations is in everyone's best interest, and further believe that providing additional time to review the record will expedite matters for your office, particularly with regard to clarifying these issues.

We request a two-week extension from the original close of the 30-day response period, assuming the record is made available to us by the Regional Board prior to August 1.

If you have any questions regarding this request, please contact me at (310) 434-2300. Thank you for your consideration.

Sincerely,

Noah Garrison
Natural Resources Defense Council

SB-AR-278

TERESA JORDAN
3152 SHAD COURT
SIMI VALLEY, CA 93063
TELEPHONE NO. (805) 522-5016

JUL 2009
Received
Office of the
Chief Counsel

TO: Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

FAX NO.: (916) 341-5620

DATE: July 13, 2009

NO. OF PAGES: 2 (includes cover sheet)

RE: *PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WDRs ORDER NO. R4-2009-0057 [NPDES NO. CA0064022] VENTURA COUNTY-WIDE MS4 SWRCB/OCC FILE A-2023).

SB-AR-279

3152 Shad Court
Simi Valley, CA 93063
July 13, 2009

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: "PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.(WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057[NPDES NO. CAS004002]FOR STORM WATER (WET WEATHER) AND NON-STORM WATER(DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: COMPLETE PETITION(30-DAY RESPONSE) SWRCB/OCC FILE A-2023."

Dear Ms. Townsend:

The following are my comments on the aforementioned subject for the Board's consideration for now.

I support the Petitioners request for a State Water Resources Control Board public hearing.

I will be submitting additional comments as time permits --I have to share the computer with my husband who was laid off from his place of employment about two weeks ago which makes it difficult but not impossible to get my evidentiary materials together, and I am once again seeing to my Mom's health needs--before the 30 days deadline.

Please note that the State Water Board's and the Los Angeles Regional Water Board's Websites were down over the weekend.

Sincerely,

Mrs. Teresa Jordan

Mrs. Teresa Jordan

TERESA JORDAN
3152 SHAD COURT
SIMI VALLEY, CA 93063
TELEPHONE NO. (805) 522-5016

TO: Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

FAX NO.: (916) 341-5620

DATE: July 14, 2009

NO. OF PAGES: 5 (includes cover sheet)

RE: "SWRCB/OCC FILE A-2023"
Complete Petition -- Ventura Countywide
MS4 NPDES Permit CAS004002
(LARWQCB Order No. R4-2009-0057).

SB-AR-281

3152 Shad Court
Simi Valley, CA 93063
July 14, 2009

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: "PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.(WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057[NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER(DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: COMPLETE PETITION(30-DAY RESPONSE) SWRCB/OCC FILE A-2023."

Dear Ms. Townsend:

This letter is a follow-up to my July 13, 2009 letter on the aforementioned subject. The following are my comments on the Petitioners document titled "PETITION FOR REVIEW OF VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, REQUEST FOR IMMEDIATE STAY, REQUEST FOR HEARING, Cal. Water Code Section 13320" for the Board members consideration.

#1 - I support the Petitioners request for a public hearing because lines 4 through 7 on Page 1 state "the final decision of the California Regional Water Quality Control Board, Los Angeles Region (the 'Regional Board') to approve the Ventura County municipal separate storm sewer system permit...relates...to the broader general public". The Petitioners version of the events of the Board's May 7, 2009 public hearing on the Ventura Countywide MS4 NPDES Permit is mind boggling and heartbreaking because the "certain non-governmental organizations" that "joined forces with certain representatives of the permittees" circumvented and violated the public

participation process with the "secretly-negotiated side agreement"/"(the Side Agreement)" (first bullet point on Page 2).

For years, I have fought my City(Simi Valley), my County(Ventura), the Ventura County Watershed Protection District, and the Federal Emergency Management Agency(FEMA) for circumventing and violating the public participation process with regards to the City's fiscal years Preliminary Base Budgets, County's Multi-Jurisdictional Hazard Mitigation Plan, the Ventura County Watershed Protection District's Flood Mitigation Plan, and the current Plan, and the current FEMA/County of Ventura/Nolte Flood Insurance Study(FIS) and Flood Insurance Rate Maps(FIRMs). because these documents are all incomplete and inaccurate. My efforts to get these government entities to do the right thing for the general public--since the citizenry's pocketbooks are impacted through increased fees, damaged properties, and loss of quality of life/life itself--to date have all been in vain. My public review and comment period submitted letters are ignored, public comments submittals were not noted in the County and District's approved Plans, and follow-up letters through the years are not responded to.

The Petitioners "challenge"(number 2, line 17?, on Page 2) of the Los Angeles Regional Water Board's May 7, 2009 Ventura Countywide MS4 NPDES Permit decision must see the light of day to make it clear to all government entities, non-government entities, and the general public that the State of California laws governing the public participation process must always be adhered to.

#2 - Denying the Petitioners request for a public hearing will call into question: 1. the State and Regional Water Boards 2008-2012 Strategic Plan Update commitment to the public/the public trust goal, 2. the newly created Office of Public Participation("to strengthen our efforts at involving the public in our decision-making process", waterboards "About Us" Web site), 3. the newly created Public Participation

Program("to strengthen our efforts at involving the public in our decision-making processes", waterboards "Participation" Web site), 4. the May 18, 2005 Draft Public Participation Policy, 5. the Needs Assessment(prepared for the Water Boards by the Center for Collaborative Policy of California State University-Sacramento, in partnership with University of California, Davis Extension), 6. the Los Angeles Regional Water Quality Control Board's Public Notices(Web site, "In keeping with California's commitment to provide meaningful public involvement in governmental decisions, the Los Angeles Water Board receives public comments on many types of draft documents"), 7. the May 7, 2009 Ventura Countywide MS4 NPDES Permit's Public Information and Participation Program(PIPP, PART 4.C), 8. the April 25, 2006 HOW TO PARTICIPATE IN THE RULEMAKING PROCESS: THE STATUTES, REGULATIONS AND CASE LAW YOU NEED TO MAKE YOUR VOICE HEARD IN THE CALIFORNIA RULEMAKING PROCESS, and 9. Governor Arnold Schwarzenegger's E-Mail the Governor's Website statement "It is only through open communication that we can continue to make government more efficient and helpful to the people of California". Denial of the Petitioners request for a public hearing will open the floodgates to having the Little Hoover Commission's waterboards dismantling recommendations followed to the letter(Clearer Structure, Cleaner Water: Improving Performance and Outcomes at the State Water Boards(January 2009 Audit Report).

#3 - The permittees violated the NOTICE TO PUBLIC OF NEGOTIATING SESSIONS by not disclosing the joining with "certain non-governmental organizations" to broker the "Secret Agreement". The May 11, 2009 www.biasc.org article "Ventura County Stormwater Permit Adopted" states "In the weeks before the hearing, the cities in Ventura County and the Natural Resources Defense Council and Heal the Bay brokered this alternative proposal". Thus, there were many opportunities for permittees to notify their citizenry.

#4 - The 1999 Amended Consent Decree(Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. et al. v. Browner, et al., Case No. 98-4825 SBA)'s "THIRD-PARTY BENEFICIARIES"(No. 38) provision may have been violated by the permittees by joining with the "non-governmental organizations" to broker the "Secret Agreement".

#5 - The 1992 Ventura Countywide MS4 NPDES Permit Implementation Agreements which set the existing fees that cannot be increased--because the permittees would have to follow Proposition 218 --pre-date the 1999 Amended Consent Decree (Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. et al. v. Browner, et al., Case No. 98-4825 SBA). Within the past two years these IAs have been amended to change the permittees cost share. The permittees did not undertake the original 1992 Implementation Agreements, and the two Amendments to the 1992 IAs through the public hearings process. The non-governmental organizations are not signatories to the IAs.

#6 - The permittees constituents must have the legal opportunity to scrutinize the "Secret Agreement".

#7 - The May 7, 2009 LARWQCB approved Ventura Countywide MS4 NPDES Permit's E.14(FINDINGS) section did not include "Amended" with the "Consent Decree in Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. V. Browner, Case No. 98-4825 SBA)" statement.

#8 - The "PEOPLE OF CALIFORNIA" are also aggrieved.

#9 - The Los Angeles Regional Water Board issued the Ventura Countywide MS4 NPDES Permit on May 7, 2009 "in violation of due process".

Sincerely,

Mrs. Teresa Jordan

Mrs. Teresa Jordan

A-2023

SB-AR-285

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

July 16, 2009

VIA U.S MAIL & EMAIL

Mr. Noah Garrison
Natural Resources Defense Council
Los Angeles Office
1314 Second Street
Santa Monica, CA 90401
moakley@nrdc.org

Mr. Garrison,

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: DENIAL OF REQUEST FOR EXTENSION
SWRCB/OCC FILE A-2023

I have received your request for an extension of time in which to respond to the above petition. The State Water Resources Control Board Office of Chief Counsel has little flexibility in which to manage the review period set forth in Title 23, California Code of Regulations, section 2050.5. The Governor's furloughs have made it even more difficult for our office to process petitions within the regulatory deadlines. Therefore, I must deny your request.

If you should have additional questions, I may be reached at (916) 341-5169. In future correspondence, please ensure that the petitioner and Regional Board are copied.

Sincerely,

Marleigh Wood
Senior Staff Counsel

cc: See next page

cc: **[via email & U.S. mail]**
Andrew R. Henderson, Esq.
Building Industry Legal
Defense Foundation
1330 South Valley Vista Drive
Diamond Bar, CA 91765
AHenderson@biasc.org

Mr. Michael Lewis **[via U.S. mail]**
Construction Industry Coalition
on Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, CA 91791

Ms. Deborah Smith **[via email only]**
Assistant Executive Officer
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Ms. Tracy Egoscue **[via email only]**
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Mr. Doug Eberhardt, Chief **[via email only]**
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San Francisco, CA 94105
eberhardt.doug@epa.gov

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Lyris List **[via email only]**

Interested Persons List

SB-AR-287

TERESA JORDAN
3152 SHAD COURT
SIMI VALLEY, CA 93063
TELEPHONE NO. (805) 522-5016

TO: Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

FAX NO.: (916) 341-5620

DATE: July 23, 2009

NO. OF PAGES: 22 (includes cover sheet)

RE: "PETITION OF BUILDING INDUSTRY DEFENSE FOUNDATION... COMPLETE PETITION (30-DAY RESPONSE) SWRCB/OCC FILE A-2023."

SB-AR-288

3152 Shad Court
Simi Valley, CA 93063
July 22, 2009

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: "PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC.(WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057[NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER(DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: COMPLETE PETITION(30-DAY RESPONSE) SWRCB/OCC FILE A-2023."

Dear Ms. Townsend:

This letter is a follow-up to my letters of July 13, 2009, July 14, 2009(4 pages), and July 17, 2009(10 pages) on the aforementioned subject. The following are my final comments on the Petitioners document titled "PETITION FOR REVIEW OF VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, REQUEST FOR IMMEDIATE STAY, REQUEST FOR HEARING, Cal. Water Code Section 13320" for the Board members consideration.

#1 - I support the Petitioners statement that the Regional Board's adoption of the Ventura Permit was "an abuse of discretion"(Page 2, number 4, lines 2 and 3; Statement of Reasons Why the Regional Board Action was Inappropriate or Improper).

#2 - I support the Petitioners statement that the Regional Board in adopting the Ventura Permit "disregarded the...obligations of local government..."(Page 3, number 4, third bullet point, lines 23 and 24).

#3 - I support the Petitioners statement that the "Permittees were complicit in such derogation of state law by negotiating the Secret Agreement" (Page 3 number 4, 3rd bullet point, line 28; and Page 4, number 4, 3rd bullet point, line 1).

It is stated on Page 12 of 133 of the May 7, 2009 NPDES No. CAS004002 Ventura County Municipal Separate Storm Sewer System Permit Order No. 09-0057, under "FINDINGS.D.7", that "Permittees should work cooperatively to control the contribution of pollutants from one portion of the MS4 to another portion of the system through inter-agency agreements or other formal arrangements". The meetings(for months) with the "certain non-governmental organizations" were not sanctioned by all of the Permittees through a formal agreement. The letter submitted by the "certain non-governmental organizations" and "certain representatives of the permittees" for Los Angeles Regional Water Board consideration is not a formal agreement. Whatever documentation these two parties presented to the Los Angeles Regional Water Board on May 7, 2009 is not a formal agreement. If only a verbal agreement was presented by these parties to the Los Angeles Regional Water Board on May 7, 2009 this is not a formal agreement.

It is stated on Page 45 of 133 of the May 7, 2009 Final Permit Order, under "PART 3.E.1(f)", that "The Principal Permittee shall...Convene the Committee Meetings constituted pursuant to subpart 4.F.1., below, upon designation of representatives". It is also stated under "PART 3.F.1(e)" that "Each Permittee shall... Participate in Committee Meetings, as necessary" (Page 46 of 133). The negotiation sessions/ meetings between the "certain non-governmental organizations" and representatives of the Permittees should have been legally noted for public participation; not conducted in secrecy!!!

It is stated on Page 128 of 133 of the May 7, 2009 Final Permit Order, under "PART 7.I.2(b)", that "After notice and opportunity for a hearing, this Order may be terminated or modified for

cause, including but not limited to...Obtaining this Order by...failure to disclose all relevant facts". The Permittees elected officials did not notify their constituents about the negotiation sessions, and negotiated agreements with the "certain non-governmental organizations". The failure to disclose all relevant facts clearly illustrates the need to have PART 7.H.1 read "Except as otherwise provided in this Order, all applications, reports, or information submitted to the Regional Water Board shall be signed by the City Mayor, or Chairperson of the County Board of Supervisors, or Chairperson of the County Watershed Protection District Board of Supervisors". The State must require a more stringent regulation than is "set forth in 40 CFR122.22"(Page 127 of 133)!!!

#4 - I support the Petitioners conclusion that the Los Angeles Regional Water Board "gutted"(Page 5, number 4, 5th bullet point, line 7; and Page 8, number 9, line 2) portions of the May 7, 2009 Revised Tentative Order by replacing text with information from the "certain non-governmental organizations" and "certain representatives of the permittees"(Page 2, number 4, 1st bullet point, lines 15 and 16) "Side"/Secret "Agreement" (Pages 2 through 9).

#5 - The Los Angeles Regional Water Board not only replaced text, but also deleted the February 24, 2009 Tentative Order, and May 7, 2009 Revised Tentative Order PART 5.E.IV.4 Mitigation Funding requirements. The Tentative Order required under "(a)" that "The Principal Permittee or a coalition of Permittees shall create a management framework to fund regional or subregional solutions to storm water pollution..."(Page 63). The Revised Tentative Order required under "(a)" that "The Principal Permittee or a coalition of Permittees shall create a Mitigation Funding Plan to fund regional or subregional solutions to storm water pollution..."(Pages 63 and 64). The Revised Tentative Order also required under "(a)(5)" that "The Permittees shall submit the Mitigation Funding Plan to the Executive Officer for approval 445 days after Permit adoption. The

Mitigation Funding Plan shall be deemed in effect upon Executive Officer approval"(Page 64).

Deletion of the "Mitigation Funding Plan" impacts the following sections of the May 7, 2009 Final Permit Order:

1. "FINDINGS.A.3"(Page 2 of 133)--the 1992 Ventura County "benefit assessment levy for storm water and flood management in the unincorporated areas...and the cities within the County, to be used in part to finance the implementation of a countywide NPDES municipal storm water permit program...agreement with the Watershed Protection District to finance the activities related to the Ventura County MS4 Permit for shared and district wide expenses",

2. "FINDINGS.E.7"(Page 16 of 133)--"the local agency Permittees...authority to levy service charges, fees, or assessment sufficient to pay for compliance with this Order subject to certain voting requirements contained in the California Constitution...Local agencies can levy service charges, fees, or assessments on these activities, independent of real property ownership",

3. "FINDINGS.E.28"(Page 27 of 133)--the Regional Water Board's "economic analysis"(*Economic Considerations of the Proposed Storm Water(Wet Weather) and Non-Storm Water(Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein*, June 2, 2008),

4. "FINDINGS.F.21"(Page 34 of 133)--"costs required for compliance with the provisions",

5. "PART 3.C.1(a) through (viii)"(Page 44 of 133)--"Fiscal Resources", "Annual Budget Summary", "Budgets", "expenditures", "Overall Administrative costs", "Other costs associated with storm water management(describe)", and "Miscellaneous Expenditures(describe)", and

6. "PART 3.F.1(d)"(Page 46 of 133)--Report ...any supplemental dedicated budgets for the same categories".

Without the "Mitigation Funding Plan", the following previous economic actions by some of the Permittees will get buried, or lost:

1. the 1992 City of Simi Valley request to the Ventura County Board of Supervisors to include detention basins fees in the Ventura County Flood Control District (now the Ventura County Watershed Protection District)'s Benefit Assessment Program(BAP)--public hearings were not agendized by the Permittees,

2. the 1996 City of Simi Valley the Federal Emergency Management Agency(FEMA) Hazard Mitigation Grant Program funds application/allocation for the 6 of 11 Regional Storm Water Detention Basins project--public hearings were not held,

3. the 1998 City of Simi Valley State of California General/Native American CDBG Program funds for the 6 of 11 Regional Storm Water Detention Basins project--public hearings were not held,

4. the 2004? Ventura County Public Works Agency federal funding for the Tapo Canyon Regional Storm Water Detention Basin project--this basin was included in the City of Simi Valley's the FEMA HMGP application/allocation, but this County of Ventura federal funding application resulted from the 2003 Simi Fire,

5. AB 554(Karnette/Nava, aka AB 1003 vetoed by the Governor, 2005, authorizing the Ventura County Watershed Protection District to levy property-related fees)--during the State Senate Committee hearing (Senator Tom McClintock was present) Mr. Nava had no problem with six fold costs' impacts to his constituents,

6. the 2008 Ventura County/Watershed Protection District Amendment to the 1992 NPDES Permit Implementation Agreement--Permittees costs shares were recalculated yet no public hearings were agendized (a subcommittee of Permittees representatives discussed the matter), only Signature Pages were adopted by most of the Permittees,

7. the 2009 Ventura County/Watershed Protection District Amendment to the 1992 NPDES Permit Implementation Agreement--Permittees costs shares were recalculated yet no public hearings were agendized (possible the same subcommittee of Permittees representatives discussed the matter), only Signature Pages were adopted by possibly all of the Permittees,

8. the passing of street sweeping costs to the citizenry by the City of Ventura (about 2 years ago), and the City of Thousand Oaks(possibly in the FY 2009-10 Budget) handing over this storm water permit program requirement to the trash collecting/hauling businesses,

9. the transfer of the storm water program from the Sanitation Fund to the General Fund by the Simi Valley City Council beginning in the FY 2009-10 Budget,

10. the updating of the 1986 City of Simi Valley *Dam Failure Plan*, and

11. the updating of the 1990 City of Simi Valley *Master Plan of Drainage*--I learned from City staff from the Public Works Department on August 23, 1996(by way of a telephone conversation) that the Wood Ranch area drainage planning is accommodated by developments' facilities designs, so this document may not include the Wood Ranch area.

A required "Mitigation Funding Plan", that has gone through each Permittees' formal public participation process(a legally noticed public review and comment period, and public hearings) will once and for all do what my investigation requests to the: 1. FEMA/DHS Inspector General, 2. USEPA Inspector General, 3. California Attorney General, and 4. Ventura County Grand Jury have failed to do for the citizens and taxpayers of Ventura County, the Ventura County Watershed Protection District, and the Ventura County incorporated Cities to date because as I have feared since learning within the past year that "changing the behavior of the public" may not just mean altering individuals way of living, but instead the "behavioral change assessment strategy"(PART 4.C.2(c)(8), on Page 50 of 133 of the May 7, 2009 Final Permit Order) is meant to get the public's support for bond measures that impact their pocketbooks, and change the State of California Constitution's 2/3rds majority vote requirement.

#6 - Under "FINDINGS.E.7", on Page 14 of 133 of the May 7, 2009 Final Permit Order, it is stated "This Order does not constitute an unfunded local government mandate subject to subvention under Article XIIIB, Section (6) of the California Constitution for several reasons..." It is also stated on Page 16 of 133, same section, under the "Third" paragraph, that "The ability of a local agency to defray the cost of a program without raising taxes indicates that a program does not entail a cost subject to subvention". After addressing the Department of Water Resources' Flood Control Subventions Program's submittals of Emergency Regulations

for Financial Assistance for Flood Management Projects(AB 1147), and Regular Regulations for Financial Assistance for Flood Management Projects(AB 1147) to the Office of Administrative Law--OAL Decision Numbers 2008-0731-02E and 2009-0417-02S were both disapproved, and the "Notice for 15-Day Comment Period, AB 1147 Regulations" was just announced on July 20, 2009 --and noting that the DWR's FloodSAFE California Program's Strategic Plan Website still states "DWR accepted public comment on the draft FloodSAFE Strategic Plan during a series of FloodSAFE Stakeholder Briefings held throughout California in June and July 2008. Comments received have been captured in the briefing summaries, which will soon be posted"(such a stakeholder briefing took place in the Ventura County area), I am not all that convinced by these May 7, 2009 Final Permit Order "subvention" statements especially when the DWR insists on calling applicants "Sponsors".

#7 - Under "FINDINGS.A.3", on Page 2 of 133 of the May 7, 2009 Final Permit Order, it is stated "The Ventura County Board of Supervisors approved the concept of a countywide NPDES permit program and the use of the Flood Management District (presently the Watershed Protection District) benefit assessment authority to finance it on April 14, 1992". "Flood Management District" is inaccurate. The correct name is "the Flood Control District".

#8 - Under "PART 4.A.2(4), on Page 46 of 133 of the May 7, 2009 Final Permit Order, it is stated "BMP substitution will be in accordance with the public review provisions of the Order(Part 8C.1 and Part 8C.2)". "(Part 8C.1 and Part 8C.2)" is inaccurate. The correct section of the Order is "(Part 7C.1 and Part 7C.2)".

#9 - Under "PART 5.IV", on Page 96 of 133 of the May 7, 2009 Final Permit Order, it is stated "IV. TMDL..." "IV" is inaccurate. The correct section of the Order is "V" since "IV" is already penned on Page 95 of 133. Thus, "V"

on Page 96 of 133 is also inaccurate. This section of the Order is therefore "VI".

#10 - Under "FINDINGS.F.18", on Page 34 of 133 of the May 7, 2009 Final Permit Order, it is stated "In accordance with Federal regulations at 40 CFR 124.8, a Fact Sheet has been prepared to explain the principal facts and the significant factual, legal, methodological, policy, and economic matters considered in preparing the Order. This Fact Sheet has been made a part of the Administrative Record". Inaccuracies in the Fact Sheet pointed out by me in my letters for the Los Angeles Regional Water Board to consider were not covered in any of the Board staff's various responses to submitted comments, nor in the Change Sheet. Nor were the inaccuracies in other Ventura Countywide MS4 NPDES permit documents pointed out by me in my five submitted letters responded to by the Los Angeles Regional Water Board's staff.

#11 - The real purpose of the rushed "Side"/Secret "Agreement" may be found under "FINDINGS.F.5" which states "During the term of the Order, the Permittees shall implement all necessary control measures to reduce pollutant(s) which cause or continue to cause or contribute to water quality impairments, but for which TMDLs have not yet been developed or approved, to eliminate the water quality impairment(s). Successful efforts to reverse the wet weather impairments during the permit term for such pollutants, may avoid the need for a WLA for wet weather or the need to develop a TMDL in the future"(Page 29 of 133).

#12 - The June 2, 2009 letter from the Board's Chief Deputy Executive Officer to Mr. Jeff Pratt still refers to the Ventura County Watershed Protection District as the "Ventura Watershed Protection District" on Page 1 of 3. Board staff also refers to the Ventura County Public Works Agency as the "Ventura County Public Works" on Page 3 of 3. These points have been noted by me time and again in public comment letters

submitted on other Los Angeles Regional Water Quality Control Board Ventura County related tentative documents. Alas, all of my efforts to have the changes made to date have been in vain.

#13 - My facsimile cover sheet logo--depicting a home, family, a flood channel with flowing water, and the surrounding environment(sky, tree, hills, mountains, and ground) with the caption VISIONARIES PAST-PRESENT-FUTURE--serves to illustrate why I have made preserving and protecting the public participation process for the "general public" a lifetime commitment.

Sincerely,

Mrs. Teresa Jordan

Mrs. Teresa Jordan

Enclosures:

March 24, 1992, Letter from City of Simi Valley Mayor Greg Stratton to the Ventura County Board of Supervisors.

April 4, 2002, Ventura County Grand Jury Complaint.

March 4, 2004, DHS Inspector General's Office Letter.

April 20, 2005, Letter to the U.S. EPA Inspector General. (2 Pages)

May 5, 2008, Letter to the City of Simi Valley City Council. (2 Pages)

May 7, 2008, Letter to the Ventura County Board of Supervisors. (2 Pages)

June 4, 2008, Letter from the Howard Jarvis Taxpayers Association.

May 13, 2009, Letter to the Ventura County Watershed Protection District Board of Supervisors.

CITY OF SIMI VALLEY

2929 Tapo Canyon Road, Simi Valley, California 93063 • (805) 583-6700

March 24, 1992

Ventura County Board of Supervisors
800 S. Victoria Avenue
Ventura, CA 93009

Honorable Chair Flynn and Members of the Board:

The City of Simi Valley anticipates that in May 1992 it will be notified by the Federal Government that stormwater permitting will be required. In order to keep stormwater quality within the proposed standards and to retain stormwaters within the drainage facilities (redline channels) presently in place, the detention basins identified in Simi Valley's Master Plan of Drainage should be constructed.

Presently, significant areas of Simi Valley are shown to be susceptible to flooding as shown in Flood Hazard Boundary maps published by the Federal Emergency Management Agency (FEMA). Properties in these flood areas are required to obtain insurance under specific guidelines of the Federal Insurance Program. The cost of this insurance is substantial, ranging up to approximately $500 per house per year.

The City Council recommends that the Board of Supervisors modify its existing Benefit Assessment Funding Program(s), administered by the Ventura County Flood Control District, to include detention basins. This program will meet the need to control the quantity (and quality) of the stormwater runoff thus eliminating Simi Valley's susceptibility to flooding.

City and County staff have held preliminary discussions regarding such a Benefit Assessment Funding Program. It is hoped that your Board would support this effort.

Sincerely,

Gregory Stratton, Mayor
City of Simi Valley

cc: City Council
City Manager
City Attorney
Administrative Officer - Ventura County
City Managers-Cities of Thousand Oaks, Camarillo, Moorpark
Director of Public Works - Ventura County
Director of Public Works, Cities of Thousand Oaks, Camarillo, Moorpark

USER.LTR\le

GREGORY STRATTON, Mayor • BILL DAVIS, Mayor Pro Tem • BARBI WEBB, Council Member • JUDY MIKELS, Council Member • MICHAEL W. PIPER, Council Member

county of ventura

Grand Jury
800 South Victoria Avenue
Ventura, CA 93009
(805) 654-2873

ALL COMPLAINTS RECEIVED BY THE GRAND JURY ARE TREATED CONFIDENTIALLY

Date: April 4, 2002

Your Name: Mrs. Maria Teresa Jordan
Home Address: 3162 Shad Court
City, State, & Zip: Simi Valley, CA 93063
Phone Number: Home (805) 522-5016 Work ( )

BRIEF SUMMARY OF PROBLEM - Include dates of events, names of officials, other persons, departments and agencies involved. (Attach additional sheets if necessary.)

Dear Members of the Grand Jury:

I am requesting that you investigate the County Flood Control District's Benefit Assessment Program fees for detention basins.

In March 24, 1992, the City of Simi Valley City Council requested to the Ventura County Board of Supervisors to levy this fee on residents of Simi Valley, Moorpark, Camarillo, Thousand Oaks, and County unincorporated areas without public hearings in any of the communities. The City of Simi Valley has garnered State CDBG Program and FEMA HMEP funds in the millions of dollars, but to date the City Council nor the County Supervisors have rescinded the fee. It is unfair for other communities to pay for Simi Valley projects.

Please refer to enclosed January 15, 2002 report's "Ventura County Flood Control District" section.

Signature: Mrs. Teresa Jordan Maria Date: April 4, 2002

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General
Washington, DC 20528

MAR - 4 2004

Teresa Jordan
3152 Shad Court
Simi Valley, CA 93063

OIG Complaint Number: 0403210

Dear Ms. Jordan:

The purpose of this letter is to acknowledge receipt of your correspondence on March 2, 2004. It will be reviewed by the staff of the Investigations Division, Office of Inspector General. If additional information is required for this review, you will be notified.

Thank you for your interest in the elimination of fraud, waste and abuse in the programs and operations of the Department of Homeland Security.

Sincerely,

Elizabeth M. Redman
Assistant Inspector General
for Investigations

SB-AR-301

3152 Shad Court
Simi Valley, CA 93063
April 20, 2005

Inspector General Nikki Tinsley
U.S. EPA
1200 Pennsylvania Avenue N.W. (2410T)
Washington, DC 20460

Re: Investigation of the County of Ventura and Its Cities Countywide NPDES Program Permit, and the County of Ventura and the City of Simi Valley Joint Regional Stormwater Detention Basins Program.

Dear Inspector General Tinsley:

Back on June 2, 2003, I wrote requesting a formal investigation relative to the City of Simi Valley's compliance with the Countywide NPDES Program Permit, and Program funds. The response I got from the U.S. EPA was a telephone call telling me to follow up on the matter locally. I have done so, but have gotten nowhere and the situation has become grave.

Inspector General Tinsley, I don't know how much this matter has to do with my van being shot at in 2004(it disabled a headlight, the AC unit doesn't work properly, and I have a leak in the brake line), and less than a month ago my son's car had three windows shot out completely(two on the driver's side; he was not in the car, nor near it, thank God), and the windshield riddled by whatever hit it. In the past my station wagon's side window was shot at while driving my Dad home on the freeway, my sister in Sacramento was held up at gun point at home inside her garage, and my younger sister's house in Simi Valley was shot at--my nephew could have been killed or badly hurt because he was near the window--(the Police Department didn't want to send an officer to take a report at first), my home has been broken into, and our vehicles of various types have been tampered with.

Inspector General Tinsley, I am now writing to ask for a formal investigation of the City of Simi Valley's non-compliance with the Countywide NPDES Program Permit, and

the County of Ventura non-compliance, as well as the Program funds.

Inspector General Tinsley, I would really appreciate a written response to this letter. Thank you.

Sincerely,

Mrs. Teresa Jordan

Mrs. Teresa Jordan

Enclosures:

June 2, 2003, Letter to U.S. EPA Inspector General Nikki Tinsley. (2 Pages)

April 19, 2005, Letter to CA Senator Sheila Kuehl; A.B. 1003(NAVA). (4 Pages)

April 18, 2005, Letter to the Ventura County Board of Supervisors; Agenda Item 17 - Amend Agreement with Mount Sinai Memorial Park. (4 Pages)

April 10, 2005, Letter to CA Assemblywoman Lois Wolk; A.B. 1003(Nava). (4 Pages)

March 4, 2004, Letter from DHS IGO; OIG Complaint Number: 0403210; Investigation of federal funds allocated by FEMA for the City of Simi Valley/ County of Ventura regional stormwater detention basins project.

April 4, 2002, Ventura County Grand Jury Complaint; Investigation of Ventura County Flood Control District's Benefit Assessment Program fees for detention basins.

March 24, 1992, Letter from City of Simi Valley City Mayor Greg Stratton to Ventura County Board of Supervisors; Include detention basin fees under the Ventura County Flood Control District's Benefit Assessment Program.

3152 Shad Court
Simi Valley, CA 93063
May 5, 2008

Simi Valley City Council
Simi Valley City Hall
2929 Tapo Canyon Road
Simi Valley, CA 93063

Re: Agenda Item Consent Calendar 5(6)--Request Authorization to Amend Countywide Stormwater Quality Management Program Implementation Agreement.

Dear Members of the Council:

I am opposed to the aforementioned item for reasons given in my April 14, 2008 letter to you, my comments given in my December 17, 2007 letter to the Ventura County Board of Supervisors/Watershed Protection District members, and the following points.

#1 - You are not approving a Resolution in accordance with the Board of Supervisors/District members February 15, 2005 meeting discussions on the matter of Amending the Ventura County Watershed Protection Act to authorize the Ventura County Watershed to levy property-related fees.

#2 - The Signature Page, on Page 7 of tonight's Staff Report, does not include a date of approval.

#3 - The text of your copy of the Amendment to the 1992 Implementation Agreement does not coincide with the language approved by the Board of Supervisors on December 17, 2007.

#4 - Section 3. Expenditures, Section IV, subsection C as proposed for amendment sets a dangerous precedent by requiring the cities to fund a portion of the Ventura County Watershed Protection District's expenses that are a requirement of being a principal permittee(City

of Thousand Oaks Amended IA February 6, 2008 Meeting Staff Report).

#5 - The Amendment to the 1992 Implementation Agreement is not being undertaken as a public hearing.

Members of the Council, this proposed Amendment to the 1992 Countywide Implementation Agreement must not be approved.

Sincerely,

Teresa Jordan

Teresa Jordan

3152 Shad Court
Simi Valley, CA 93063
May 7, 2008

Ventura County Board of Supervisors
Hall of Administration
800 S. Victoria Avenue
Ventura, CA 93009

Re: The Ventura County Watershed Protection District (formerly Ventura County Flood Control District)'s FY 2008-2009 Benefit Assessment Program.

Dear Members of the Board:

I am opposed to staff recommendations for the aforementioned item, most especially with relative to the Amendment to the 1992 Countywide NPDES Permit Implementation Agreement for the reasons given in my December 17, 2007 letter to you, the April 14, 2008 letter to the City of Simi Valley City Council, the May 5, 2008 letter to the City of Simi Valley City Council, in my May 5, 2008 letter to Mr. Raul Medina(LARWQCB), and the following point.

#1 - The contact telephone number and facsimile number for the City of Moorpark differ among the Amendment to the Implementation Agreement documents undertaken by the County's cities.

Members of the Board, all of the MS4 Countywide Permit Co-Permittees must pass resolutions, sign and date the very same Amendment to the 1992 Implementation Agreement if you contemplate putting the issue of the Ventura County Watershed Protection District levying property-related fees before the voters of Ventura County in the future.

Sincerely,

Teresa Jordan

Teresa Jordan

Enclosures:

May 5, 2008, Letter to the City of Simi Valley City Council. (2 Pages)

May 5, 2008, Letter to Mr. Raul Medina(LARWQCB). (4 Pages)

April 14, 2008, Letter to the City of Simi Valley City Council. (9 Pages)

December 17, 2007, Letter to the Ventura County Board of Supervisors. (5 Pages)

SB-AR-307

HOWARD JARVIS, Founder (1903-1986)
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs

HOWARD JARVIS
TAXPAYERS ASSOCIATION

SACRAMENTO OFFICE:
921 11th Sreet, Suite 1201
Sacramento, CA 95814
(916) 444-9950, Fax: (916) 444-9823
www.hjta.org

June 4, 2008

Teresa Jordan
3152 Shad Court
Simi Valley, CA 93063

Re: Bills Removing Voter Safeguards

Dear Ms. Jordan,

Thank you for your inquiry regarding Ventura County's NPDES program and the threat presented by pending legislation.

First, let me say that I am impressed with your tenacity in monitoring, since 1992, the actions of several governmental agencies as they implement the NPDES program. Most citizens are much less vigilant about their rights.

As you know, the Howard Jarvis Taxpayers Association defended the right of taxpayers to vote on new or increased NPDES fees in the case *Howard Jarvis Taxpayers Assn. v. City of Salinas*. The Court ruled in our favor, holding that NPDES fees require voter approval.

A bill (AB 2882, Wolk) was introduced in the Legislature this year that would circumvent the holding in the Salinas case by allowing cities to include in their water rates a charge for the infrastructure and regulation needed to capture and monitor dry weather "overuse" discharges. Since the very same infrastructure and regulation applies to storm water discharges, this is just a sneaky way of hiding NPDES fees in our water bills without voter approval.

HJTA opposed this bill and has been negotiating amendments with the bill's sponsor that would remove the offending language.

If you are aware of any other bills that threaten Proposition 218's voter approval requirement, please let us know the bill numbers, and we will investigate them. Thank you for your support of the Association.

Sincerely,

Tim Bittle

Timothy A. Bittle
Director of Legal Affairs

SB-AR-308

3152 Shad Court
Simi Valley, CA 93063
May 13, 2009

RECEIVED
MAY 13 2009
OFFICE OF CLERK
BOARD OF SUPERVISORS

Board of Supervisors
V.C. Watershed Protection District
Hall of Administration
800 South Victoria Avenue
Ventura, CA 93009

Re: June 2, 2009, Public Hearing on the Ventura County Watershed Protection District's FY 2009-2010 Benefit Assessment Program.

Dear Members of the Board:

I am opposed to the aforementioned item as long as the existing assessment fees are not rescindad. There were no meetings at the County's Cities City Council levels back in 1992 relative to the NPDES permit program implementation agreements, nor for the 2008 and 2009 amendments to the 1992 implementation agreements.

Members of the Board, I hope that if you ever decide to put to a vote of your constituents a Prop 218 ballot in order to increase the existing assessment fees that you are honest with the voters about those fees, and any newly proposed ones.

Sincerely,

Teresa Jordan

Teresa Jordan

SOMACH SIMMONS & DUNN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
813 SIXTH STREET, THIRD FLOOR, SACRAMENTO, CA 95814
T: 916-446-7979 F: 916-446-8199
SOMACHLAW.COM

July 29, 2009

Via Email and First Class U.S. Mail

Ms. Marleigh J. Wood
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

SUBJECT: SWRCB/OCC File A-2023

Dear Ms. Wood:

On behalf of the Ventura County Municipal Separate Storm Sewer System (MS4) Permittees, we submit the following written response to the Petition of Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and Building Industry Association of Southern California, Inc. (BIA Petition) filed on June 8, 2009, challenging portions of the Ventura County MS4 Permit as adopted by the Los Angeles Regional Water Quality Control Board (Regional Water Board). The Ventura County Watershed Protection District, County of Ventura and the incorporated cities therein (collectively referred to as Permittees) are responsible for and subject to the provisions contained in the Ventura MS4 Permit. As such, any decision made by the State Water Resources Control Board (State Water Board) in response to the BIA Petition may directly impact the Permittees and their administration and implementation of the MS4 Permit. Considering the potential impact to the Permittees, the Permittees find it necessary to provide the following comments on the BIA Petition.

First, the Permittees take issue with Petitioners' characterization of a joint comment letter submitted by Permittee representatives, Heal-the-Bay (HTB) and the Natural Resources Defense Council (NRDC) as being a "secretly-negotiated side agreement." Contrary to the Petitioners' allegations, Permittee representatives, HTB and NRDC timely submitted a comment letter to the Regional Water Board that outlined a consensus position on certain portions of the MS4 Permit as agreed to by the signatories of the letter. (See Comment Letter Regarding Consensus on Stormwater Permit Language Between the National Resources Defense Council, Heal the Bay and the Ventura County Stormwater Permittees—Tentative Order of the Ventura County Municipal Separate Storm Sewer System Permit (Joint Comment Letter), to Chair Lutz and Board Members, dated April 10, 2009.) The letter was

dated and received by the Regional Water Board on April 10, 2009, which was within the Regional Water Board's timeframe for submittal of public comments. The Regional Water Board is legally obligated to consider all comments in making its final decision. (See 40 C.F.R. § 124.11.)

Further, participation in discussions with HTB and NRDC in an attempt to reach consensus on a number of issues for which the parties had previously disagreed is fully within the Permittees' legal rights and an appropriate use of agency discretion. In this case, as with any negotiation to reach consensus, the Permittees, HTB and NRDC each gave up something from previously entrenched positions. The results of these discussions culminated in the Joint Comment Letter that was submitted to the Regional Water Board as part of its public review process. Although not necessary or required by any law or regulation, the Permittee representatives shared the contents of the consensus agreement reached between them and HTB and NRDC with Petitioners' representatives in advance of submitting the Joint Comment Letter to the Regional Water Board. This was done as a courtesy to provide the Petitioners with an opportunity to respond to the agreement prior to its submittal to the Regional Water Board. Considering that the Permittees were well within their legal rights to participate in such discussions, and considering courtesy notice of the agreement to Petitioners prior to Regional Water Board submittal, it is unfortunate that Petitioners find it necessary to characterize the timely submitted Joint Comment Letter as a "secret-agreement." Such an allegation is untrue and inappropriate.

Second, as indicated previously, the Regional Water Board members are legally obligated to consider all comments submitted in a timely manner as part of the review process. (40 C.F.R. § 124.11.) Further, the Regional Water Board has the legal authority to adopt a NPDES permit that differs from the one proposed. (See *Natural Resources Defense Council, et al. v. U.S. EPA* (9th Cir. 1988) 863 F.2d 1420, 1429.) "Otherwise the process might never end." (*Ibid.*) When adopting a final rule (i.e., permit) that departs from the one proposed, the final rule must be a "logical outgrowth." (*Ibid.*)

In this case, the Joint Comment Letter contained agreement on four key issues relative to the MS4 Permit: Low Impact Development, Municipal Action Levels, Beach Water Quality Monitoring, and Best Management Performance Criteria. All four of these issues, and many others, were highly debated and discussed by all interested stakeholders that participated in the Regional Water Board's two-year plus process for the development of this MS4 Permit. The Petitioners actively participated in this process, which included many public workshops and stakeholder meetings. More importantly, all four issues identified in the Joint Comment Letter were part of the proposed MS4 Permit that was issued on February 24, 2009, and the version revised on April 30, 2009. Thus, the Regional Water Board's action to adopt the MS4 Permit with amendments reflective of timely submitted comments on four key, highly debated issues, was a logical outgrowth of the proposed permit noticed by the Regional Water Board. Accordingly, the State Water Board should reject

Petitioners' allegations that the Regional Water Board's adoption of the MS4 Permit denied Petitioners' due process.

Sincerely,

Theresa A. Dunham

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Arnold Schwarzenegger
Governor

TO: Marleigh Wood
Senior Staff Counsel, Office of Chief Counsel

FROM: Renee A. Purdy
Acting Section Chief, Regional Programs

DATE: July 30, 2009

SUBJECT: ADMINISTRATIVE RECORD FOR SWRCB/OCC FILE NO. A-2023

Enclosed herein is a copy of the administrative record for the Los Angeles Regional Board's action, taken on May 7, 2009, to re-issue Waste Discharge Requirements for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein (Order No. R4-2009-0057, NPDES Permit No. CAS004002).

The record consists of 35 binders of materials. Attached herewith is a copy of the master index for the record.

If you have any questions about the record, please contact Ivar Ridgeway at (213) 620-2150 or via e-mail at iridgeway@waterboards.ca.gov.

Enclosures

Administrative Record – Los Angeles Regional Water Quality Control Board
Order No. R4-09-0057
Discharge of Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Unincorporated Cities Therein; NPDES Permit No. CAS004002

Volume	Date	Document Name & Author	Page
Vol. 1		**Administrative Record**	
	September 18, 2003	Administrative Record Index, County of Los Angeles and the Incorporated Cities Therein, Except the City of Long Beach	A1 to A122
	December 13, 2001	Administrative Record For the Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles and the Incorporated Cities Therein, Except the City of Long Beach (Administrative Record on 8 CDs)	A123 to A125
		Annual Report Form for Municipalities	
		Standard Urban Storm Water Mitigation Plans (SUSMPs) Forms	A126 to A135
		Areas of Special Biological Significance (ASBS)	
		California's AquaGems: Areas of Special Biological Significance; The Ocean conservancy and National Resource Defense Council	A136 to A146
		Assembly Bills	
	November 4, 2005	AB 1003 (Nava) Ventura County Watershed Protection District	A147 to A151
	October 12, 2005	Assembly Bill 1721, Pavley Environmental Education	A152 to A156
		Atmospheric Deposition	
	July-August 2004	Some Observations on Atmospheric Dust Fallout in the Denver, Colorado Area of the United States; Urbonas; Ben R. Urbanos, P.E. Chief, Master planning and South Platte River Programs et al	A157 to A161
		Best Management Practices (BMPs)	
	January 30, 2007	Raingarden/Bioinfiltration Design: Introduction to Some Wisconsin Stormwater Approaches and the RECARGA Infiltration Model; Montgomery R., and Severson L.	A162 to A207
	January 24, 2007	International Stormwater BMP Database, EPA Meeting Washington, DC; Water Environment Research Foundation (WERF)	A208 to A314
	August 15, 2006	Increasing Compost Use By Caltrans, Project Power Point Presentation; California Integrated Waste Management Board	A315 to A326
	April- June 2006	Erosion Control Reduces Fine Particles In Runoff To Lake Tahoe; Grismer, M.E., Ellis A. L., California Agriculture, Volume 60, Number 2	A327 to A331
	2006	Compost Coverage; Keating, J.	A332 to A337
	January/February 2005	Performance Comparison of Structural Storm Water Best Management Practices; Barrett, M.	A338 to A346
	January/February 2005	Mosquito Production in Stormwater Treatment Devices in South Lake Tahoe, California; Kwan, J. et al	A347 to A353
	2005	Stormwater Management and Mosquito Issues; Wallace, C.	A354 to A355

	2005	Application of Particle Size Distribution in Highway Runoff: Optimization of Settling Tank Design to Remove Particles; Kang, J.	A356 to A367
	2005	Critical Assessment of Stormwater Treatment and Control Selection Issues; Strecker, E. et al	A368 to A656
Vol.2	March/April 2004	Meeting the Challenges of Stormwater Management and Vector Control; Banks, K. E.	A657 to A667
	January 29, 2004	Urban Integrated Pest Management: Mosquitoes By: Gouge, D. H.	A668 to A676
	January 29, 2004	West Nile Virus and Storm Water Management; Wisconsin Department of Natural Resources	A677 to A679
	January 29, 2004	West Nile Virus Wetlands and Waterways; Oregon Department of State Lands	A680 to A683
	January 29, 2004	Stormwater: Surface Hydrocarbons vs. Mosquito Breeding; Caldwell, W.	A684 to A687
	January 19, 2004	West Nile Virus and Stormwater Treatment Workshop; Middleton, K.	A688 to A689
	2004	Managing Mosquitoes in Stormwater Treatment Devices; Metrzger, M. E.	A690 to A700
	2004	Stormwater Best Management Practices, Mosquitoes, and West Nile Virus; Deatrich, M et al	A701 to A711
	July, 2003	West Nile Virus: A Fact Sheet on Mosquito Habitat; Upper Thames River Conservation Authority	A712 to A715
	May 8, 2003	$56,400 Grant Supports Study on How Storm Water Affects Mosquitoes; Wallace, J.	A716
	May 2003	An Evaluation of Mosquito Populations Near Storm Water Drainage Ponds, Versus Background Mosquito Populations in Non-Storm Water Pond Developments; Bost, H.	A717 to A722
	May 2003	Do Stormwater Retention Ponds Contribute to Mosquito Problems; U.S.E.P.A, Nonpoint Source News-Notes, Issue 71, Technical Notes	A723 to A725
	May 2003	Toronto Fact Sheet: West Nile Virus Larviciding Problem; Toronto Public Health	A726 to A727
	April, 2003	West Nile Virus - Wetlands & Waterways; Saul, L.	A728 to A732
	April 2003	Effectiveness of Urban Stormwater BMPs in Semi-Arid Climates; Urbonas, B.R., P.E.	A733 to A745
	March 1, 2003	Best Management Practices for Mosquitoes Control; Washington State Department of Ecology	A746 to A806
	2003	An Assessment of Mosquito Breeding and Control in Four Surface Flow Wetlands in Tropical-Subtropical Australia; Greenway, M.	A807 to A814
	2003	Managing Mosquitoes in Surface-Flow Constructed Treatment Wetlands; Walton, W. E.	A815 to A825

	December, 2002	Non-Structural Stormwater Quality Best Management Practices - An Overview of Their Use, Value, Cost and Evaluation; Taylor, A. et al	A826 to A858
	September 2002	Considerations in the Design of Treatment Best Management Practices (BMPs) to Improve Water Quality; U.S.E.P.A, National Risk Management Laboratory, Office of Research and Development	A859 to A870
	July 1, 2002	West Nile Virus and Mosquito-Borne Viruses in Colorado; Colorado Department of Public Health	A871 to A872
	2002	Stormwater Sand Filter Sizing and Design A Unit Operations Approach; Urbonas, B., P.E.	A873 to A891
	October, 2001	Mitigation of Storm Water Impacts From New Development in Environmentally Sensitive Areas Technical Report; Yeager, M and Swamikannu, X.	A892 to A900
	2001	Horse Keeping: A Guide to Land Management for Clean Water; San Francisco Bay Resource Conservation & Development Council, & USDA Natural Resources Conservation Service	A901 to A994
	April 16-19, 2000	Lessons Learned: The Caltrans Storm Water Best Management Practice Retrofit Study; Currier, B. Caltrans/UCD Environmental Program	A995 to A1003
	January 2000	Compost Demonstration Project, Placer County: Use of Compost And Co-Compost As A Primary Erosion Control Material; California Integrated Waste Management Board	A1004 to A1027
	2000	Grassed Swales 2000; Lowndes, M.A.The Wisconsin Storm Water Manual	A1028 to A1039
	December, 1999	Effectiveness of Street Sweeping for Stormwater Pollution Control; Walker T. A., Wong, T. H. F.	A1040 to A1089
	September, 1999	Storm Water Technology Fact Sheet:Bioretention;U.S.E.P.A,Office of Water	A1090 to A1097
	September, 1999	Storm Water Management Fact Sheet: Spill Prevention Planning; U.S.E.P.A., Office of Water	A1098 to A1102
	September, 1999	Storm Water Management Fact Sheet: Storm Water Contaminantion Assessment; U.S.E.P.A., Office of Water	A1103 to A1104
	September, 1999	Storm Water Management Fact Sheet: Non-Storm Water Discharges to Storm Sewers; U.S.E.P.A., Office of Water	A1105 to A1109
	September, 1999	Storm Water Management Fact Sheet: Materials Inventory; U.S.E.P.A., Office of Water	A1110 to A1113
	September, 1999	Storm Water Management Fact Sheet: Internal Reporting; U.S.E.P.A., Office of Water	A1114 to A1116

Administrative Record – Los Angeles Regional Water Quality Control Board
Order No. R4-09-0057
Discharge of Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Unincorporated Cities Therein; NPDES Permit No. CAS004002

	September, 1999	Storm Water Management Fact Sheet: Visual Inspection; U.S.E.P.A., Office of Water	A1117 to A1122
	September, 1999	Storm Water Management Fact Sheet: Employee Training; U.S.E.P.A., Office of Water	A1123 to A1126
	September, 1999	Storm Water Management Fact Sheet: Coverings; U.S.E.P.A., Office of Water	A1127 to A1129
	September, 1999	Storm Water Management Fact Sheet: Record Keeping; U.S.E.P.A., Office of Water	A1130 to A1133
	September, 1999	Storm Water O&M Fact Sheet: Preventative Maintenance; U.S.E.P.A., Office of Water	A1134 to A1136
	1999	A Wet Pond as a Storm Water Runoff BMP-Case Study; Taylor, S., Bein, W., Frost Associates	A1137 to A1144
	September, 1998	Mosquitoes Associated With Stormwater Detention/Retention Areas; O' Meara, G. F.	A1145 to A1146
	March, 1998	Wet Detention Basin (No) Code 1001; Wisconsin Department of Natural Resources	A1147 to A1156
	1998	Mosquitoes and Stormwater Management; The Disaster Handbook, National Edition Institute of Food and Agricultural Sciences, University of Florida Cooperative Extension Services	A1157 to A1159
	November, 1983	Potential Effectiveness of Detention Policies; Urbonas, B. et al	A1160 to A1177
		Taking the Bite Out of Mosquitoes; Regional District of North Okanagan	A1178 to A1179
		Stormwater Management and West Nile Virus; Pennsylvania Department of Environmental Protection	A1180 to A1181
	November, 2003	Water Quality: Management of Ponds, Wetlands, and Other Water Reservoirs to Minimize Mosquitoes; Ladd, B.	A1182 to A1189
	September, 2003	Storm Water Wetlands; State of Rhode Island Storm Water Manual: Chapter 11	A1190 to A1209
	September, 2003	Storm Water Ponds; State of Rhode Island Storm Water Manual	A1210 to A1228
		Hancor Offers Solution to Open-Air Retention Pond Health Risks; Anderson, S.	A1229 to A1230
		Water Conservation Information Sheet; Cumberland County Conservation District	A1231 to A1233
	2005-2006	Assessment Of Best Mangement Practice (BMP) Effectiveness For Reducing Toxicity In Urban Runoff, SCCWRP Biennial Report 2005-2006; Brown, J., and Bay, S.	A1234 to A1252
		Caltrans Study	

	November, 2003	Caltrans-Storm Water Monitoring & Data Management Discharge Characterization Study Report CTSW-RT-03-065.51.42	A1253 to A1345
Vol. 3	June, 2005	Toxicity of Storm Water From Caltrans Facilities; John Muir Institute of the Environment, University of California, Davis	A1346 to A1415
		Caltrans Storm Water Quality Handbooks	
	March, 2003	Caltrans State of California Department of Transportation Storm Water Quality Handbooks	A1416 to A1680
	May 2003	Caltrans Storm Water Quality Handbook Maintenance Staff Guide CTSW-RT-02-057	A1681 to A1920
		Caltrans Technology Report	
	April, 2004	Caltrans Storm Water Treatment BMP New Technology Report SW-04-069.04.02	A1921 to A2050
		CASQA Handbooks California Stormwater Quality Association	
		CASQA Industrial and Commercial Handbook	
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		CASQA Construction Handbook	
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		CASQA Municipal Handbook	
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		Comment Letters, To LA-RWQCB From Ventura Permittees & To Ventura Permittees From LA-RWQCB	
	January 26, 2001	County Comment Letter to LA-RWQCB for SQUIMP; Dickerson, D.	A3173 to A3176
	August 28, 2002	County Comment Letter to LA-RWQCB for Technical Guidance Manual; Solomon, E.	A3177 to A3179
	September 18, 2003	LA-RWQCB Comment Letter to County for ESA Delineation Map; Dickerson, D. A.	A3180 to A3181
	October 14, 2004	LA-RWQCB Comment Letter to County for Standardized Data Transfer Formats for Municipal Storm Water Monitoring Data; Bishop, J.	A3182 to A3183
	September 23, 2005	LA-RWQCB Comment Letter to the City of Thousand Oaks for Kevin Street Rising Groundwater Mitigation; Bishop, J. S.	A3184 to A3185
		Construction	
	December, 2005	Construction Project Size Analysis For Southern California; RWQCB-LA	A3186 to A3197
	March, 29, 2004	Wal-Mart Construction Story; Price & Company, Inc.	A3198 to A3199
	Multiple Dates	Post-Construction Storm Water Management In New Development And Redevelopment; U.S. Environmental Protection Agency	A3200 to A3363a

	January, 2001	Storm Water Phase II Final Rule, Construction Rainfall Erosivity Waiver; U.S. Environmental Protection Agency	A3364 to A3376
	1997	Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE); Renard, K.G. et al	A3377 to A3425
		Court Decisions	
	July 2, 2008	Superior Court of the State of California County of Orange, Central Justice Center; Peremptory Writ of Mandate Case No. 06CC02974; Honorable Thierry Patrick Colaw; Dept: CX-104	A3426 to A3429
	November 6, 2006	Los Angeles County Super. Ct. No. BS080792, Order Modifying Opinion, Change In Judgment; California Environmental Quality Act Applies To Issue.	A3430 to A3436
	January 26, 2006	Certified For Publication In The Court Of Appeal Of The State Of California Fourth Appellate District Division Two: City of Rancho Cucamonga (Plaintiff and Appellant) v. Regional Water Quality Control Board; Santa Ana Region et al.	A3437 to A3456
	March 22, 1999	United States District Court Approved Amended Consent Decree-Heal the Bay, Inc.; Santa Monica BayKeeper, Inc. v. Browner, Case No. 98-4825 SBA , Decided March 22, 1999; National Resources Defense Council.	A3457 to A3511
	Jan. 15 & 17, 2003	Superior Court of the State of California County of Los Angeles-Central Civil West Courthouse; Stipulations Concerning Disposition of Phase II Issues 7, 8, 10, 11, 12, & 13.	A3512 to A3523
	September 15, 2003	United States Court of Appeals for the Ninth Circuit; Environmental Defense Center, Inc. (Petitioner) & Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency.	A3524 to A3604
	June 13, 2005	In the United States Court of Appeals for the Seventh Circuit; Texas Independent Producers And Royalty Owners Association, et al v. Environmental Protection Agency.	A3605 to A3635
	February 28, 2005	United States Court of Appeals for the Second Circuit; Waterkeeper Alliance, Inc., American Farm Bureau Federation, National Chicken Council, National Pork Producers Council, American Littoral Society, Sierra Club, Inc., Natural Resources Defense Council,	A3636 to A3668
	June 16, 2005	In the United States Court of Appeals for the Fifth Circuit; Texas Independent Producers and Royalty Owners Association, et al v. United States Environmental Protection Agency.	A3669 to A3677
	March 23, 1999	U.S. EPA Affirmed Decision, General Motors Corp. v. EPA, EAB Appeal Number: CWA 96-5.	A3678 to A3696

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	November 12, 2005	U.S. Census Bureau Population Estimates, 2000-2004	A3744 to A3746
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	2002	NAICS Sector Definitions, Agricultural Facilities(111xxx Crop Production), Commercial Faclities (424xxx Merchant Wholesalers, Nondurable Goods), Commercial Facilities (44xxxx Retail Trade)	A3749 to A3758
	2006	USGS Definition of Stream	A3759
	December, 1998	The Land Base of California's Forests; Fire and Resource Assessment Program, California Department of Forestry and Fire Protection; pgs. 5-6	A3760 to A3761
	September 12, 2005	Agriculture Sector; Compliance Assistance-U.S. Environmental Protection Agency	A3762
	August 2, 2005	Nurseries Strengthen Roots in Ventura County; LA Times SF - Pg. B3	A3763
		Economics	
	April 18, 2008	Storm Water Pollution Control Requirements, Files 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21; Response To Test Claims 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21; Elizabeth Miller Jennings, Staff Counsel IV, Office of Chief Counsel, State Water Resources Control Board	A3764 to A3788
	April 10, 2008	Specific provision of the 2001 Municipal Separate Storm Water System ("MS4") permit of the County of Los Angeles have been called into question as going beyond what is required under section 402(p) of the CWA… ; Ms. Tam M. Doduc, Chair and Ms. Dorothy R. Rice, Executive Director, State Water Resources Control Board	A3789 to A3791
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	March 7, 2007	State of California Department of Transportation; G. Scott McGowen, Chief Environmental Engineer	B886 to B888
		Comments from LA County	
	March 7, 2007	County Sanitation Districts of Los Angeles County; Stephen R. Mgguin and Robert Asgian, Division Engineer	B889 to B890
	March 7, 2007	Executive Advisory Committee, Stormwater Program - County of Los Angeles; Desi Alvarez, P.E., Chair	B891 to B894
	March 7, 2007	County of Los Angeles, Department of Public Works; Donald L. Wolfe, Director and Mark Pestrella, Assistant Deputy Director, Watershed Management Division	B895 to B916
		Comments from Cities Within LA County	
	March 12, 2007	City of Inglewood; Tom Leary, Public Works Director	B917 to B923
	March 7, 2007	Coalition For Practical Regulation; Kenneth C. Farfsing, City Manager, City of Signal Hill	B924 to B926
	March 7, 2007	City of Long Beach, Department of Public Works - Stormwater Management Division; Tom Leary	B927 to B929
	March 6, 2007	City of Carson; Patricia Elkins, Building Construction Manager	B930 to B937
		Record For Comment Letters Received by April 5, 2007 Deadline, draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit, December 27, 2006, NPDES PERMIT NO. CAS004002	
		Comments from Associations	
	March 7, 2007	California Stormwater Quality Association (CASQA); Bill Busath, Chair	B938 to B947
	March 7, 2007	Construction Industry Coalition on Water Quality - Building Industry Association of Southern California; Mark Grey, Ph.D., Director of Environmental Affairs, & Geosyntec Consultants; Linsa Austin, Donna Bodine, and Eric Strecker	B948 to B978
	March 7, 2007	Legal Defense Foundation; Andrew R. Henderson, General Counsel Building Industry and Building Industry Association/Greater L.A. Ventura Chapter; Holly Schroeder, Chief Executive Director	B979 to B1105
	March 1, 2007	Local Government Commission; Judy Corbett, Executive Director	B1106 to B1113

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		Comments from Environmental Groups	
	March 7, 2007	Heal The Bay; Kirsten James, Staff Scientist	B1114 to B1120
	March 6, 2007	Natural Resource Defense Council (NRDC); Michelle Mehta, Project Attorney	B1121 to B1305
		Comments from Businesses/Companies	
	March 7, 2007	Brash Industries; Marvin H. Sachse, P.E., CPESC, CPSWQ	B1306
	March 2, 2007	Environmental Compliance Services (TECS); Ray Tahir	B1307 to B1315
	February 26, 2007	CONTECH Stormwater Solutions Inc.; Vaikko Allen II, CPSWQ, Regulatory Relations Manager-West	B1316 to B1322
		Comments from Residents	
	March 7, 2007	Form e-mail, Proposed Stormwater Permit Won't Clean Our Water!; Various Residents	B1323 to B1324
	March 7, 2007	Form e-mail, Water Permit Threatens Housing!; Various Residents	B1325 to B1326
	March 7, 2007	Form e-mail, Don't Encourage Sprawl!; Various Residents	B1327 to B1328
	March 7, 2007	Form e-mail, Stormwater Will Stifle Business Growth!; Various Residents	B1329 to B1330
	March 7, 2007	Form e-mail, Proposed Permit Levies Unfunded Mandates!; Various Residents	B1331 to B1332
	March 6, 2007	Resident of the City of Simi Valley; Ginn Doose	B1333 to B1334
	March 6, 2007	Resident of the City of Simi Valley; Theresa Jordan	B1335 to B1338
		Record For Comment Letters Received Late After March 7, 2007 Deadline, draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit, December 27, 2006, NPDES PERMIT NO. CAS004002	
		Comments from Associations Received Late After March 7, 2007 Deadline	

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	March 26, 2007	Surfrider Foundation - Ventura County Chapter - Matilija Coalition; A. Paul Jenkin, Environmental Director	B1339 to B1344
		Comments from Residents Received Late After March 7, 2007 Deadline	
	March 8 & 19, 2007	Form e-mail, Stormwater Will Stifle Business Growth!; Various Residents	B1345 to B1346
	March 8, 9 & 14, 2007	Form e-mail, Don't Encourage Sprawl!; Various Residents	B1347 to B1348
	March 8, 9 & 12, 2007	Form e-mail, Water Permit Threatens Housing!; Various Residents	B1349 to B1350
	March 8 & 11, 2007	Form e-mail, Proposed Stormwater Permit Won't Clean Our Water!; Various Residents	B1351 to B1352
	March 8 & 11, 2007	Form e-mail, Proposed Permit Levies Unfunded Mandates!; Various Residents	B1353 to B1354
		Comments from Permittees Received Late After March 7, 2007 Deadline	
	May 23, 2007	City of Ojai; Carol Smith, Mayor	B1355 to B1356
	May 16, 2007	City of Port Hueneme; Maricela P. Morales, Mayor	B1357 to B1358
	April 3, 2007	City of Fillmore; Bert J. Rapp, P.E., Public Works Director	B1359 to B1360
		Comments Received on Posted Comment Letters - draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit, December 27, 2006, NPDES PERMIT NO. CAS004002	
Vol. 3	April 12, 2007	Resident of the City of Simi Valley; Theresa Jordan	B1361 to B1363
		Meetings with Associated Handouts, draft Ventura County Municipal Separate Storm Sewer System Permit December 27, 2006, NPDES Permit No. CAS004002	
	September 17, 2007	Meeting at LA-RWQCB with Geosyntec Consultants, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition on Water Quality (CICWQ), and LARWQCB Staff	B1364
	July 17, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittee, City of Los Angeles, Southern California Coastal Water Research Project, Santa Monica Bay Restoration, City of Los Angeles-EMD, Los Angeles County-SD, Los Angeles County Dept. of Public Works, Heal The Bay, County of	B1365 to B1370

		Orange, Aquatic Bioassay, and LARWQCB Staff	
	July 9, 2007	Meeting at LA-RWQCB with Geosyntec Consultants, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition on Water Quality (CICWQ), and LARWQCB Staff	B1371 to B1398
	July 5, 2007	Meeting at LA-RWQCB with Geosyntec Consultants, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition on Water Quality (CICWQ), Michael Levy (Senior Staff Counsel- LARWQCB), Jennifer L. Fordyce (Staff Counsel- LARWQCB), and LARWQCB Staff	B1399 to B1400
	July 5, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees (Gerhardt Hubner & Viki Musgrove), Larry Walker Associates, Tess Dunham (Somach, Simmons & Dunn-Ventura Counsel), Michael Levy (Senior Staff Counsel- LARWQCB), and LARWQCB Staff	B1401 to B1402
	June 27, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees, Larry Walker Associates, Charles Abbott Associates, Geosyntec Consultants, Building Industry Association (BIA), Collation for Practical Regulation (CPR), Los Angeles City, Michael Levy (Senior Staff Counsel- LARWQCB), and LARWQCB Staff	B1403 to B1417
	June 27, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees, Larry Walker Associates, and LARWQCB Staff	B1418 to B1430
	June 13, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees, Larry Walker Associates, City of Downey, Collation for Practical Regulation (CPR), Heal The Bay, Natural Resources Defense (NRDC), Geosyntec Consultants, Building Industry Association (BIA), Los Angeles City, Los Angeles County Dept. of Public Works, Jennifer L. Fordyce (Staff Counsel- LARWQCB), and LARWQCB Staff	B1431 to B1449
	June 13, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees, Larry Walker Associates, Jennifer L. Fordyce (Staff Counsel- LARWQCB), and LARWQCB Staff	B1450 to B1466
	June 6, 2007	Meeting at LA-RWQCB with California Stormwater Quality Association (CASQA), County of Orange, Larry Walker Associates, and LARWQCB Staff	B1467 to B1481
	June 1, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees (Cities of Ventura and Camarillo), Larry Walker Associates, City of Downey, Los Angeles County Dept. of Public Works, Heal The Bay, and LARWQCB Staff	B1482 to B1526
	May 31, 2007	Meeting at LA-RWQCB with Building Industry Association (BIA), Geosyntec Consultants, and LARWQCB Staff	B1527 to B1528

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	May 29, 2007	Meeting at LA-RWQCB with California State Dept. of Health Services, and LARWQCB Staff	B1529 to B1624
	May 9, 2007	Meeting at LA-RWQCB with California Stormwater Quality Association (CASQA), and LARWQCB Staff	B1625 to B1629
		Meetings with Associated Handouts, draft Ventura County Municipal Separate Storm Sewer System Permit December 27, 2006, NPDES Permit No. CAS004002	
	May 8, 2007	Meeting at LA-RWQCB with Ventura County MS4 Permittees, Larry Walker Associates, Michael Levy (Senior Staff Counsel- LARWQCB), and LARWQCB Staff	B1630 to B1657
	April 25, 2007	Meeting at LA-RWQCB with Southern California Coastal Water Research Project, Santa Monica Bay Restoration, Heal The Bay, City of Los Angeles-EMD, Los Angeles County-SD, County of Orange, and LARWQCB.	B1658 to B1659
		Meetings with Associated Handouts, draft Ventura County Municipal Separate Storm Sewer System Permit December 27, 2006, NPDES Permit No. CAS004002	
	April 3, 2007	Meeting at LA-RWQCB with Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition on Water Quality (CICWQ), and LARWQCB Staff	B1660 to B1663
	March 29, 2007	Meeting at LA-RWQCB with Los Angeles DWP, Metropolitan Water District, Calleguas Water District, and LARWQCB.	B1664 to B1665
	February 9, 2007	Meeting at LA-RWQCB with Larry Walker Associates, California Stormwater Quality Association (CASQA), and LARWQCB.	B1666
		Comments and/ or Documents From Permittees and Associations Received From Meetings Held After Workshop #1 (April 7, 2007) on the 1st draft of the Ventura County Municipal Separate Storm Sewer System (MS4) Permit, December 27, 2006, NPDES PERMIT NO. CAS004002	
	August 15, 2007	Draft CASQA White Paper – Quantifiable Approach to Municipal Stormwater Program Implementation and Permit Compliance Determination; California Stormwater Quality Association (CASQA) Geoff Brosseau, Executive Director	B1667 to B1687
	August 15, 2007	Ventura Countywide Stormwater Quality Management Program, Small Communities Tiered Permit Approach Draft for Discussion; Ventura Countywide Stormwater Quality Management Program; Hubner, G.	B1688 to B1690
	July 30, 2007	Ventura County Non-Urban Areas; Ventura Countywide Stormwater Quality Management Program; Paul Tantet, Engineering Manager,	B1691 to B1698a

		Ventura County Public Works Agency	
	July 23, 2007	Planning & Land Development Program, Section "E" of draft Permit; Ventura Countywide Stormwater Quality Management Program; Gerhardt J. Hubner, Chair	B1699 to B1774
	July 20, 2007	Building Industry Association of Southern California (BIASC), Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), & Construction Industry Coalition on Water Quality (CICWQ); Mark Grey, Ph.D., Director of Environmental Affairs, Melissa Poole, Nossaman Guthner Knox & Elliott LLP	B1775 to B1955
	July 19, 2007	City of Ventura Hillside and Grading Policies; Ventura Countywide Stormwater Quality Management Program; Gerhardt J. Hubner, Chair and Nancy Broschart, City of Ventura, Maintenance Services	B1956 to B1960
	July 11, 2007	Issue Paper For Development Construction Program and Section "F" Language of draft Permit, County of Ventura Countywide Stormwater Quality Management Program; Hubner, G.	B1961 to B1974
	June 29, 2007	Building Industry Association of Southern California (BIASC), Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), & Construction Industry Coalition on Water Quality (CICWQ); Mark Grey, Ph.D., Director of Environmental Affairs, Mellssa Poole, Nossaman Guthner Knox & Elliott LLP	B1975 to B2034
		Letters/ Correspondence- From: Heal The Bay, To: RWQCB-LA, draft Ventura County Municipal Separate Storm Sewer System Permit, December 27, 2006, NPDES Permit No. CAS004002	
	July 9, 2007	Heal The Bay; Gold, M.	B2035
		Documents Received Via E-Mail, draft Ventura County Municipal Separate Storm Sewer System Permit (12-27-06) NPDES Permit No. CAS004002	
	February 12, 2007	**Using Site Design Techniques to Meet Development Standards for Stormwater Quality (May, 2003); Bay Area Stormwater Management Agencies Association and Stormwater Quality Planning for New Development and Redevelopment (January, 2003); Section 2.4 & 2.4.1 California Stormwater BMP Handbook. From: Geoff Brosseau, Executive Director, California Stormwater Quality Association (CASQA)**	B2036 to B2061
		White Paper	

	July 18, 2007	White Paper from Local Government Commission; Nancy Mathison	B2062 to B2073
Volume	**Date**	**Document**	**Page**
Vol. 1		**2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit No. CAS004002**	
	August 28, 2006	2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit, Order 07-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein; RWQCB-LA.	C1 to C124
		2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit, Order 07-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein, Attachment A-E; RWQCB-LA.	C125 to C136
		2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit, Order 07-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein, Attachment F; RWQCB-LA.	C137 to C158
		2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit, Order 07-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein, Attachment G; RWQCB-LA.	C159 to C162
		2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit, Order 07-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein, Attachment H; RWQCB-LA.	C163 to C195

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		Public Notice with Cover Letter for 2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit No. CAS004002	
	August 23, 2007	Public Notice with Cover Letter for 2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07) NPDES Permit No. CAS004002, Workshop; RWQCB-LA	C196 to C197
	August 23, 2007	Confirmation of Order 1189901, (Government Public Notice); Vermyil Thomas, Daily Journal Corporation	C198
		Notice of Public Meeting/Hearing, Thursday, September 20, 2007, The City of Ventura (City Council Chambers) For 2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07), NPDES Permit No. CAS004002	
	September 10, 2007	Notice of Public Meeting/Hearing, Thursday, September 20, 2007, The City of Ventura (City Council Chambers) For 2nd draft Ventura County Municipal Separate Storm Sewer System Permit (08-28-07) NPDES Permit No. CAS004002	C199 to C206
		Order of Proceedings for Item Number 5 - Order of Workshop - Regional Board Meeting, September 20, 2007, For 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, (08-28-07), NPDES Permit No. CAS004002	
	September 12, 2007	Order of Proceedings for Item Number 5 - Order of Workshop - Regional Board Meeting, September 20, 2007 For 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, (08-28-07), NPDES Permit No. CAS004002	C207 to C209
		Workshop Presentations (September 20, 2007), 2nd draft County of Ventura "Municipal Separate Storm Sewer System" (MS4) Permit August 28, 2007, NPDES Permit No. CAS004002	
	September 20, 2007	Workshop Presentation 2nd draft County of Ventura "Municipal Separate Storm Sewer System" (MS4) Permit, August 28, 2007, NPDES Permit No. CAS004002; RB4 Staff, Storm Water Permitting	C210 to C230
	September 20, 2007	Workshop Presentation, Ventura Countywide Program Municipal Stormwater Program and Draft RWQCB Permit; Ventura Countywide Stormwater Quality Management Program	C231 to C237
	September 20, 2007	Workshop Presentation, Small Communities Issues; Bert Rapp, Ventura Countywide Stormwater Quality Management Program	C238 to C247
	September 20, 2007	Workshop Presentation, Stormwater Quality Monitoring; Arne Anselm, Ventura County Watershed Protection District	C248 to C260
	September 20, 2007	Workshop Presentation, Jurisdictional Concerns; Paul Tantet, County of Ventura	C261 to C267

	September 20, 2007	Workshop Presentation, Additional Treatment Control BMP Installation at All Critical Source Facilities; Anita Kuhlman, City of Camarillo	C268 to C272
	September 20, 2007	Workshop Presentation, Trash Excluders; Shaun Kroes, City of Moorpark	C273 to C281
	September 20, 2007	Workshop Presentation, Hydrologic Control Issues; Bill O'Brien, City of Ojai	C282 to C299
	September 20, 2007	Workshop Presentation, TMDL Program Consistency; Mark Pumford, City of Oxnard	C300 to C312
	September 20, 2007	Workshop Presentation, Public Information and Participation Program; Fred Camarillo, City of Port Hueneme	C313 to C315
	September 20, 2007	Workshop Presentation, Low Impact Development (LID); Kevin Gieschen, City of Simi Valley	C316 to C323
		Workshop Presentations (September 20, 2007), 2nd draft County of Ventura "Municipal Separate Storm Sewer System" (MS4) Permit August 28, 2007, NPDES Permit No. CAS004002	
	September 20, 2007	Workshop Presentation, Public Construction Activities and Long Term Maintenance Programs; Jay Spurgin, City of Thousand Oaks	C324 to C329
	September 20, 2007	Workshop Presentation, Municipal Action Levels; Vicki Musgrove, City of Ventura	C330 to C348
	September 20, 2007	Workshop Presentation, BIA of Southern California—Greater Los Angeles-Ventura Chapter and Construction Industry Coalition on Water Quality; Mark Grey, Technical Director, BIASC/CiCWQ	C349 to C358
	September 20, 2007	Workshop Presentation, Municipal Action Levels & Assessing Compliance and Effectiveness; Geoff Brosseau,California Stormwater Quality Association (CASQA)	C359 to C366
	September 20, 2007	Workshop Presentation Comments on the Second Draft Ventura County MS4 Permit; Heal The Bay and Natural Resources Defense Council (NRDC)	C367 to C395
	September 20, 2007	Workshop Presentation, Low Impact Development (LID); Natural Resources Defense Council (NRDC)	C396 to C413
		Board Meeting/ Workshop Transcript (September 20, 2007), 2nd draft County of Ventura "Municipal Separate Storm Sewer System" (MS4) Permit August 28, 2007, NPDES Permit No. CAS004002	
	September 20, 2007	Board Meeting/ Workshop (Transcript) State of California Los Angeles Regional Water Quality Control Board, The City of Ventura, City Council Chambers, September 20, 2007	C414 to C528
		Time Extension for Comments - 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES	

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		Permit No. CAS004002	
	September 24, 2007	E-Mail From: Los Angeles Regional Water Quality Control Board, To: Ventura County Permittees; Subject: Time Extension for comments to the draft Ventura County MS4 Permit.	C529 to C530
	September 24, 2007	E-Mail From: Los Angeles Regional Water Quality Control Board, To: Businesses (MCohen@rwglaw.com, rwatson@rwaplanning.com, hschroeder@biaglav.org, mgrey@biasc.org, LAustin@Geosyntec.com, mpoole@nossaman.com, mlcoffee@Nossaman.com, angietam@caaprofessionals.com, lcoe-juell@citymb.info, mailto.bweber@edcnet.org, kmoran@tdcenvironmental.com, MCohen@rwglaw.com, LBond@rwglaw.com, nisenson@comcast.net, tcw@penfieldsmith.com, john.kosco@tetratech-ffx.com, Martina.Keefe@tetratech.com, geoff@brosseau.us, steve.carter@tetratech-ffx.com, wes.ganter@pgenv.com, mackw@lwa.com, ron@wspa.org); Subject: Extension for comments to the 2nd draft Ventura County MS4 Permit.	C531 to C532
	September 24, 2007	E-Mail From: Los Angeles Regional Water Quality Control Board, To: Municipalities and County Associations (ggreene@downeyca.org, jmillett@rwaplanning.com, Tom_Leary@longbeach.gov, myeager@dpw.sbcounty.gov, ageorge@dpw.lacounty.gov, bdepoto@dpw.lacounty.gov, fwu@dpw.lacounty.gov, mpestrel@dpw.lacounty.gov, robert.vega@lacity.org, ayman.jabbouri@lacity.org, ammar.eltawil@lacity.org, shahram.kharaghani@lacity.org, canderson@lgc.org, cmink@ci.calabasas.ca.us, Richard.boon@rdmd.ocgov.com; Subject: Extension for comments to the 2nd draft Ventura County MS4 Permit.	C533 to C534
	September 24, 2007	E-Mail From: Los Angeles Regional Water Quality Control Board, To: Environmental Organizations (kjames@HealTheBay.org, mgold@HealTheBay.org, bjacobsen@nrdc.org, dbeckman@nrdc.org, mmehta@nrdc.org, cleanwater@sfo.com, info@sbck.org, edc@edcnet.org, pjenkin@sbcglobal.net); Subject: Extension for comments to the 2nd draft Ventura County MS4 Permit.	C535 to C536
	September 24, 2007	E-Mail From: Los Angeles Regional Water Quality Control Board, To: Government Agencies (tduffey@coastal.ca.gov, awanger@coastal.ca.gov, PHammer@waterboards.ca.gov, DBowyer@waterboards.ca.gov, ggearheart@waterboards.ca.gov, bfujimoto@waterboards.ca.gov, molloy.jennifer@epa.gov, Faulk.Jack@epa.gov, Cieland.Bruce@epamail.epa.gov, Kozelka.Peter@epa.gov, pme25@comcast.net,	C537 to C538

		estornell.paula@epa.gov, ruf.christine@epa.gov); Subject: Extension for comments to the 2nd draft Ventura County MS4 Permit.	
		Time Extension for Comments - 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	August 31, 2007	Letter From: Ventura Countywide Stormwater Quality Management Program; Hubner, G. To: RB4; Smith D.; Subject: Request for Extension of Written Public Comment Period - Second Draft Ventura County Municipal Separate Storm Sewer System Order (No. CAS004002)	C539 to C540
		Letters/ Correspondence- From: Board of Supervisors County of Ventura, To: RWQCB-LA, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	October 30, 2007	Letter/ Correspondence, Regarding: Request for Additional Public Workshop on Proposed Municipal Stormwater Permit for Ventura Countywide Program (NPDES No. CAS004002); Parks, Linda	C541 to C542
		Letters/ Correspondence- From: Assembly California Legislature, Pedro Nava - Assembly Member, Thirty-Fifth District To: RWQCB-LA, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	October 30, 2007	Letter/ Correspondence, Regarding: Ventura County MS-4 Draft Permit NPDES Permit No. CAS004002; Assemblymember Pefro Nava, Aassemblymember Julia Brownley, Assemblymember Audra Strickland, Assemblymember Cameron Smyth, Senator George Runner, and Senator Sheila Kuehl	C543 to C544
		Letters/ Correspondence- From California Department of Finance, To: Commission on State Mandates, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	March 27, 2008	Letter/ Correspondence, Regarding: Regarding: CSM-03-TC-04, "Transit Trash Receptacles", CSM-03-TC-019, "Inspection of Industrial/Commercial Facilities, CSM-03-TC-20, "Waste Discharge Requirements, CSM-03-TC-21, "Stormwater Pollution Control Requirements, California Regional Water Quality Control Board's Executive Order #01-182 (test claim permit), California Department of Finance review of the test claims submitted by the County of Los Angeles and several cities (claimants) asking the Commission on State Mandates (Commission) to determine whether specified costs incurred under the test claim permit are reimbursable state mandated costs; California Department of Finance	C545 to C630

		Letters/ Correspondence- From Ventura County Watershed Protection District, To: RWQCB-LA, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	March 20, 2008	Letter/ Correspondence, Subject: Proposed Modification to Instream Bioassessment Monitoring Work Plan Under Ventura County Municipal Separate Storm Sewer System Permit (NPDES Permit No. CAS004002) To Synchronize Efforts With The Southern California Stormwater Monitoring Coalition's Regional Watershed Monitoring Program; Hubner, Gerhardt	C631 to C632
		Letters/ Correspondence- From: RWQCB-LA, To: Ventura Countywide Stormwater Quality Management Program, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	April 25, 2008	Letter/ Correspondence, Regarding: Request to Modify Bioassessment Monitoring Program Required Under the Ventura County Municipal Separate Storm Sewer System Permit (MS4) Permit (Board Order No. 00-108, NPDES Permit No. CAS004002); RWQCB-LA	C633 to C634
		Comments Received During Workshop - Regional Board Meeting, September 20, 2007, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	September 20, 2007	Comments Received During Workshop - Regional Board Meeting, September 20, 2007, 2nd draft Ventura County MS4 Permit, NPDES Permit No. CAS004002, August 28, 2007; California Coastal Commission	C635
	September 20, 2007	Comments Received During Workshop - Regional Board Meeting, September 20, 2007, 2nd draft Ventura County MS4 Permit, NPDES Permit No. CAS004002, August 28, 2007; Jensen Design & Survey, Inc.	C636 to C637
		Record for Comment Letters Received By October 15, 2007 Deadline, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
		Comments from Permittees	
	October 15, 2007	Ventura County Watershed Protection District; Jeff Pratt, Director	C638 to C642
	October 15, 2007	County of Ventura Public Works Agency, #1; Ronald C. Coons, Director	C643 to C653

Administrative Record – Los Angeles Regional Water Quality Control Board
Order No. R4-09-0057
Discharge of Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Unincorporated Cities Therein; NPDES Permit No. CAS004002

	October 15, 2007	County of Ventura Public Works Agency, #2; Ronald C. Coons, Director	C654 to C657
Vol. 2	October 15, 2007	City of Ojai; Jere A. Kersnar, City Manager	C658 to C659
	October 15, 2007	City of Moorpark; Yugal K. Lall, Public Works Director	C660 to C661
	October 15, 2007	City of Port Hueneme; Maricela P. Morales, Mayor	C662 to C663
	October 15, 2007	City of Thousand Oaks; Mark D. Watkins, Public Works Director	C664 to C665
	October 14, 2007	City of Oxnard; Mark R. Pumford for Mark S. Norris, Assistant Public Works Director	C666 to C673
	October 12, 2007	City of Ventura; Ronald J. Calkins, Director of Public Works	C674 to C675
	October 12, 2007	City of Simi Valley, Mike Sedell, City Manager	C676 to C678
	October 12, 2007	City of Camarillo; Jerry Bankston, City Manager	C679 to C680
	October 12, 2007	Ventura Countywide Stormwater Quality Management Program; Gerhardt J. Hubner, Chair	C681 to C894
		Comments from Ventura County Associations/Agencies/Districts	
	September 19, 2007	Ventura County Agricultural Association; Robert P. Roy, President and General Counsel	C895
		Comments from LA County	
	October 15, 2007	County of Los Angeles Department of Public Works; Donald L. Wolfe, Director of Public Works for Mark Pestrella, Assistant Deputy Director, Watershed Management Division	C896 to C899
	October 15, 2007	Executive Advisory Committee Stomwater Program - County of Los Angeles; Gerald E. Greene, Chair	C900 to C901
		Comments from Cities Within LA County	
	October 15, 2007	Department of Water and Power the City of Los Angeles, #2; Katherine Rubin, Interim Manager Wastewater Quality Compliance	C902 to C905
	October 15, 2007	Coalition For Practical Regulation; Larry Forester, CPR Steering Committee, City Council Member, City of Signal Hill	C906 to C913

	June 8, 2007	Department of Water and Power the City of Los Angeles, #1; James D. McDaniel, Chief Operating Officer	C914 to C916
		Comments from Associations/Commissions/Districts	
	October 15, 2007	California Stormwater Quality Association (CASQA); Geoff Brosseau, Executive Director	C917 to C921
	October 15, 2007	Building Industry Association of Southern California, Inc.; Andrew R. Henderson, Vice President and General Counsel	C922 to C975
	October 15, 2007	Consturction Industry Coalition On Water Quality; Mark Grey, PhD., Technical Director	C976 to C978
	October 15, 2007	Calleguas Municipal Water District; Donald R. Kendali, PhD., P.E., General Manager	C979
	October 15, 2007	Western States Petroleum Association; Michaeleen Mason, Director, Statewide Regulatory Issues	C980 to C987
	October 15, 2007	Calieguas Creek Watershed Management Plan; Donald R. Kendall, Ph.D., P.E., Chair	C988
	October 15, 2007	AGC California, Tri-Counties District; Tony Morelli, District Manager	C989 to C991
	October 12, 2007	Local Government Commission; Clark Anderson	C992 to C1008
		Comments from Environmental Groups	
	October 15, 2007	Natural Resource Defense Council and Heal The Bay; David Beckman, Senior Attorney, NRDC, Mark Gold, President, Heal the Bay, Kirsten James, Staff Scientist, Heal the Bay	C1009 to C1025
	September 13, 2007	Surfrider Foundation - Ventura County Chapter - Matilija Coalition; A. Paul Jenkin, Environmental Director	C1026 to C1029
		Comments from Businesses/Companies	
	October 15, 2007	Contech Stormwater Solutions, Inc.; Vaikko Allen, Regulatory Manager-Southwest	C1030 to C1037
	October 15, 2007	Blois Construction, Inc.; Steve Blois	C1038 to C1039
	October 15, 2007	Union Engineering Company, Inc.; Ernest L. Ford, President	C1040
	September 28, 2007	Golden State Water Company; William C. Gedney	C1041 to C1045

	September 19, 2007	Jensen Design & Survey, Inc.; Ron Jensen, Susanne Cooper, Robert Talmadge	C1046 to C1047
		Comments from Residents	
	October 15, 2007	Resident; Brenda-Superseal	C1048
	September 24, 2007	Form e-mail, Stormwater Will Stifle Business Growth!; Mark May	C1049
	September 20, 2007	Resident of the City of Simi Valley; Ginn Doose	C1050 to C1051
	September 19, 2007	Form e-mail, Water Permit Threatens Housing!; Various Residents	C1052 to C1055
	September 18, 2007	Form e-mail, Proposed Stormwater Permit Won't Clean Our Water!; Various Residents	C1056 to C1058
	September 18, 2007	Form e-mail, Proposed Permit hurts cities, taxpayers, and businesses!; Various Residents	C1059 to C1061
	September 17, 2007	Resident of the City of Simi Valley; Mrs. Theresa Jordan	C1062 to C1067
		Record For Comments Received Late After October 15, 2007 Deadline, 2nd draft Ventura County Municipal Separate Storm Sewer System (MS4) Permit, August 28, 2007, NPDES PERMIT NO. CAS004002	
		Comments from Permittees Received Late After October 15, 2007 Deadline	
	October 31, 2007	City of Santa Paula; Wally Bobkiewicz, City Manager	C1068 to C1069
	October 16, 2007	City of Fillmore; Bert J. Rapp, P.E., Public Works Director	C1070 to C1084
		Meetings with Associated Handouts, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	
	October 3, 2007	Meeting at LA-RWQCB with Geosyntec Consultants, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition On Water Quality (CICWQ), and LARWQCB Staff	C1085
	March 13, 2008	Meeting at LA-RWQCB with Ventura County MS4 Permittees (City of Camarillo, Fillmore, Simi Valley, and Watershed Protection District), Larry Walker Associates, and LARWQCB Staff	C1086 to C1100

	February 28, 2008	Meeting at Ventura County Government Center, Hall of Justice - Pacific Conference Room with Ventura County MS4 Permittees, Larry Walker Associates, Somach, Simmons & Dunn (Ventura Counsel), County of Ventura Public Works Agency, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Los Angeles County Dept. of Public Works, Richard Watson Association, Michael Levy (Senior Staff Counsel- LARWQCB), and LARWQCB Staff	C1101 to C1104
	February 27, 2008	Meeting at Ventura County Government Center, Hall of Justice - Pacific Conference Room with Ventura County MS4 Permittees, Larry Walker Associates, Somach, Simmons & Dunn (Ventura Counsel), County of Ventura Public Works Agency, County of Orange, San Bernardino Flood Control District, Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), Construction Industry Coalition on Water Quality (CICWQ), Geosyntec Consultants, Collation for Practical Regulation (CPR), Los Angeles City, Los Angeles County Dept. of Public Works, University of California Sea Grant, Natural Resources Defense (NRDC), Heal The Bay, Ventura CoastKeeper, California Stormwater Quality Association (CASQA), Local Government Commission, California Coastal Commission, Jeff Ogata (Staff Counsel III (Specialist) - RWQCB), and LARWQCB Staff	C105 to C1111
	January 9, 2008	Meeting at LA-RWQCB with Drinking Water Purveyors (Calleagues MWD, City of Camarillo, LADWP, Golden State, and LARWQCB Staff)	C1112
		Comments and/ or Documents From Permittees and Associations Received From Meetings Held After Workshop #2 (August 28, 2007) on the 2nd draft of the Ventura County Municipal Separate Storm Sewer System (MS4) Permit, August 28, 2007, NPDES PERMIT NO. CAS004002	
	March 18, 2008	Proposal for Stormwater Monitoring (Urban Outfall Discharge Monitoring and Response Plan) and Maps (Countywide and Individual Permittees), and Strikeout/Redline of Part 5 of 2nd Draft SW Permit (minus Part E - Planning & Land Development, and changes to Grading Restrictions under the Construction Program); Ventura Countywide Stormwater Quality Management Program; Gerhardt J. Hubner, Chair	C1113 to C1168
	April 18, 2008	Hydromodification and Hydrologic Controls Strikeout/Redline of Hydromodification Aspects of 2nd Draft NPDES Permit (No. CAS004002) for Ventura County; Ventura Countywide Stormwater Quality Management Program; Gerhardt J. Hubner, Chair	C1169 to C1176
		Presentations Given By Regional Water Board Staff - 2nd draft Ventura County Municipal Separate Storm Sewer System Permit, August 28, 2007, NPDES Permit No. CAS004002	

	November 29, 2007	Presentation at SCAG - Water Policy Task Force Meeting, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit; Xavier Swamikannu	C1177 to C1217
	December 7, 2007	Presentation at Psomas Breakfast Meeting Program, Proposed Planning & Land Development Program Requirement Changes in Ventura and Los Angeles Counties, 2nd draft Ventura County Municipal Separate Storm Sewer System Permit; Xavier Swamikannu	C1218 to C1228
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Vol. 1		Draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08), NPDES Permit No. CAS004002	
	April 29, 2008	draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08), NPDES Permit, Order 08-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein; RWQCB-LA.	D1 to D193
		Public Notice with Cover Letter for draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08), NPDES Permit No. CAS004002	
	April 24, 2008	Public Notice with Cover Letter for draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08) NPDES Permit No. CAS004002, Workshop; RWQCB-LA	D194 to D195
	April 25, 2008	Confirmation of Order 1329915, (Government Public Notice); Vermyil Thomas, Daily Journal Corporation	D196 to D198
		Public Notice - Change of Venue with Cover Letter for draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08), NPDES Permit No. CAS004002	
	June 24, 2008	Public Notice - Change of Venue with Cover Letter for draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08) NPDES Permit No. CAS004002, Workshop; RWQCB-LA	D199 to D200
	June 23, 2008	Confirmation of Order 1373608, (Government Public Notice); Vermyil Thomas, Daily Journal Corporation	D201
		Notice of Public Meeting/Hearing, Thursday, July 10, 2008, The City of Ventura (City Council Chambers) For draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (04-29-08), NPDES Permit No. CAS004002	
	June 20, 2008	Notice of Public Meeting/Hearing, Thursday, July 10, 2008, County Government Center, Hall of Administration, Board of Supervisors Hearing Room, For draft Tentative Ventura County Municipal Separate	D202 to D205

		Storm Sewer System Permit (04-29-08) NPDES Permit No. CAS004002	
		Notice of Cancellation of Workshop (July 10, 2008) For draft Tentative County of Ventura "Municipal Separate Storm Sewer System" (MS4) Permit April 29, 2008, NPDES Permit No. CAS004002	
	July 7, 2007	Notice of Cancellation of Workshop (July 10, 2008) For draft Tentative Ventura County Municipal Separate Storm Sewer System (MS4) Permit April 29, 2008	D206
	July 2, 2008	Superior Court of the State of California County of Orange, Central Justice Center; Peremptory Writ of Mandate Case No. 06CC02974; Honorable Thierry Patrick Colaw; Dept: CX-104	D207 to D210
		Record for Comment Letters Received By May 29, 2008 Deadline, draft Tentative Ventura County Municipal Separate Storm Sewer System Permit, April 29, 2008, NPDES Permit No. CAS004002	
		Comments from Permittees	
	May 29, 2008	City of Port Hueneme; David J. Norman, City Manager	D211 to D213
	May 29, 2008	Ventura County Watershed Protection District; Jeff Pratt, Director	D214 to D217
	May 29, 2008	County of Ventura Public Works Agency, Alec T. Pringle, Acting Agency Director	D218 to D236
	May 29, 2008	City of Moorpark; Yugal K. Lall, City Engineer/ Public Works Director	D237 to D238
	May 29, 2008	City of Thousand Oaks; Jacqul V. Irwin, Mayor	D239 to D283
	May 29, 2008	City of Simi Valley, Paul Miller, Mayor	D264 to D265
	May 29, 2008	City of Oxnard; Ken Ortega, Public Works Director	D266 to D283
	May 29, 2008	City of Ventura; Christy Weir, Mayo and Rick Cole, City Manager	D284 to D291
	May 28, 2008	City of Camarillo; Jerry Bankston, City Manager	D292 to D293
	May 28, 2008	Ventura Countywide Stormwater Quality Management Program; Gerhardt J. Hubner, Chair	D294 to D494

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Order No. R4-09-0057
Discharge of Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Unincorporated Cities Therein; NPDES Permit No. CAS004002

		Comments from U.S. Environmental Protection Agency, Region IX	
	May 29, 2008	U.S. EPA Region IX; Douglas E. Eberhardt, Chief, NPDES Permits Office	D495 to D497
		Comments from State Of California	
	May 29, 2008	Department of Transportation, Division Of Environmental Analysis, MS 27; G. Scott McGowen, Chief Environmental Engineer	D498 to D500
		Comments from LA County	
	May 29, 2008	County of Los Angeles Department of Public Works; Dean D. Efstathiou, Acting Director of Public Works and Mark Pestrella, Assistant Deputy Director, Watershed Management Division	D501 to D503
	May 29, 2008	Executive Advisory Committee Stomwater Program - County of Los Angeles; Gerald E. Greene, Chair, Executive Advisory Committee	D504 to D509
		Comments from Cities Within LA County	
	May 29, 2008	Coalition For Practical Regulation; Larry Forester, City Council Member, City of Signal Hill	D510 to D520
	May 28, 2008	Los Angeles River Watershed Management Committee; John Hunter, Chair	D521 to D522
		Comments from Orange County	
	May 29, 2008	Orange County Public Works; Chris Crompton, Manager, Environmental Resources	D523
		Comments from San Bernardino County	
	May 29, 2008	San Bernardino County Stormwater Program; Naresh P. Varma, P.E., Chief, Environmental Management Division, San Bernardino County Flood Control District	D524 to D526
		Comments from Associations/Commissions/Districts	
	May 29, 2008	Local Government Commission; Ciark Anderson, Water and Land Use Planning Specialist	D527 to D528
	May 29, 2008	Bay Area Stormwater Management Agencies Association (BASMAA); Geoff Brosseau, Executive Director	D529

	May 29, 2008	California Stormwater Quality Association (CASQA); Geoff Brosseau, Executive Director	D530 to D559
	May 29, 2008	Building Industry Association - LA/Ventura Chapter; Holly Schroeder, CEO, Building Industry Association of Southern California - LA/Ventura Chapter; Richard Lambros, CEO, Building Industry Association of Southern California; Andrew Henderson, General Counsel, Building Industry Legal Defense Foundation; and Mark Grey, PhD, Director of Environmental Affairs Construction Industry Coalition on Water Quality	D560 to D594
		Comments from Environmental Groups	
	May 29, 2008	Heal The Bay; Mark Gold, President, and Kirsten James, Water Quality Director	D595 to D607
	May 29, 2008	Wishtoyo Foundation/Ventura Coastkeeper; Matri Waiya, Coastkeeper and Ruby Evans, Project Manager	D608 to D620
	May 29, 2008	Natural Resource Defense Council and Heal the Bay; David Beckman and Bert	D621 to D638
		Comments from Businesses/Companies	
	May 29, 2008	Kimberly Colbert, and Charles Abbott Associates, Inc.; Kimberly Colbert, Director, Environmental Services Division	D639 to D645
		Comments from Residents	
	May 28, 2008	Resident of the City of Simi Valley; Mrs. Theresa Jordan	D646 to D655
	May 27, 2008	Resident of the City of Simi Valley; Mrs. Theresa Jordan	D656 to D690
		Record For Comments Received Late After May 29, 2008 Deadline, draft Tentative Ventura County Municipal Separate Storm Sewer System (MS4) Permit, April 29, 2008, NPDES PERMIT NO. CAS004002	
		Comments from Permittees	
	July 2, 2008	Audra Strickland, Assemblywoman, 37th District	D691
	June 6, 2008	City of Fillmore; Wally Bobkiewicz, City Manager	D692 to D693

	June 5, 2008	City of Santa Paula; Wally Bobkiewicz, City Manager	D694
	May 30, 2008	City of Ojai; Jere A. Kersnar, City Manager	D695 to D727
		Comments from Cities Within Orange County	
	June 25, 2008	City of Brea; John Beauman, Mayor Pro Tem	D728 to D729
		Comments from Riverside County	
	June 3, 2008	Flood Control District and Water Conservation District; Mark H. Willis, Chief of Regulatory Division	D730 to D732
		Comments from Associations/Commissions/Districts	
	June 26, 2008	Local Government Commission; Clark Anderson, Water and Land Use Planning Specialist	D733 to D756
		Comments from Businesses/Companies	
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	May 30, 2008	CONTECH Stormwater Solutions Inc.; Vaikko Allen II, CPSWQ, Regulatory Relations Manager - West	D879 to D891
		Comments from Residents	
	July 20, 2008	Citizens Coalition of Fillmore	D892 to D893
	July 1, 2008	Resident; A. Richard Fitch, Jr.	D894
	June 23, 2008	Resident of the City of Valencia; Terra Donlon	D895 to D896
		Meetings with Associated Handouts, draft Tentative Ventura County Municipal Separate Storm Sewer System (MS4) Permit, April 29, 2008, NPDES Permit No. CAS004002	
	November 21, 2008 thru January 16, 2009	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D897 to D915
	December 29 2008 & December 30, 2008	RWQCB/VC Permittees Parking Lot of Remaining Issues	D916

	December 5, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D917
	November 21, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D918
	November 7, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D919 to D938
	October 31, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D939
	October 17, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D940 to D970
	October 10, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D971
	May 15, 2008	Meeting at Ventura County Government Center with Ventura County MS4 Permittees, and LARWQCB Staff	D972 to D974
	May 23, 2008	Meeting at LA-RWQCB with Natural Resources Defense (NRDC), Heal The Bay, and LARWQCB Staff	D975
	May 22, 2008	Meeting at LA-RWQCB with Building Industry Association of Southern California/Greater Los Angeles Ventura Chapter (BIAGLA/VC), and LARWQCB Staff	D976
	May 12, 2008	Meeting at LA-RWQCB with Charles Abbott Associate (Angie Tam and Mary Salig), and LARWQCB Staff	D977 to D980
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	February 24, 2009	Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09), NPDES Permit, Order 09-xxx, NPDES Permit No. CAS004002, Waste Discharge Requirements For Storm Water Discharges From The Municipal Separate Storm Sewer System Within The Ventura County Watershed Protection District, County Of Ventura And The Incorporated Cities Therein; RWQCB-LA.	E1 to E225
		Public Notice with Cover Letter for Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09), NPDES Permit No. CAS004002	
	February 24, 2009	Public Notice with Cover Letter for draft Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09) NPDES Permit No. CAS004002, May 7, 2009 Board Meeting; Ventura County Board of Supervisors Meeting Room	E226 to E232

	February 24, 2009	Proof of Publication: 09-070 Public Notice- Renewal of Wate Discharge Requirements for Ventura County Star on February 24, 2009	E233 to E234
	February 24, 2009	Lyris Mailing List for Ventura on February 24, 2009	E235 to E238
	February 24, 2009	Lyris Mailing List for Misc. Ventura on February 24, 2009	E239 to E242
		Staff Report for Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09), NPDES Permit No. CAS004002	
	February 24, 2009	Staff Report for Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09), NPDES Permit No. CAS004002	E243 to E318
		Response to Comments for Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09), NPDES Permit No. CAS004002	
	February 24, 2009	Response to Comments for Tentative Ventura County Municipal Separate Storm Sewer System Permit (02-24-09), NPDES Permit No. CAS004002	E319 to E354
		Agenda Package for May 7, 2009 Board Meeting	
	May 7, 2009	Item No. 8- Item Summary: Public Hearing Receive Comments on the Tentative Ventura County Municipal Separate Storm Sewer System (MS4) Permit on May 7, 2009 NPDES Permit No. CAS004002	E355 to E370
		May 7, 2009 Board Meeting	
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	May 7, 2009	Speaker Request Cards	E1409 to E1426
	May 7, 2009	Board Presentation	E1427 to E1461
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		Final Documents	
	June 2, 2009	Ventura County Municipal Stormwater Permittees: Retransmittal of the Ventura County Municipal Storm Water National Pollutant Discharge	E1834 to E1977

		Elimination System (NPDES) Permit (Board Order No. R4-2009-0057; NPDES Permit No. CAS004002)	
	June 3, 2009	Tentative Order Ventura county Municipal Separate Storm Sewer System Permit (NPDES No. CAS0040002): Change Sheet	E1978 to E1980
	May 7, 2009	Land Jurisdiction in Ventura County, California Order No. 09-0057 NPDES No. CAS004002 Ventura County Municipal Separate Storm Sewer System Permit	E1981 to E1997
	May 7, 2009	Reporting Program- No. CI 7388 for Order No. 09-0057 NPDES Permit No. CAS004002 Waste Discharge Requirements Municipal Separate Storm Sewer System Discharges Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein Attachment H on May 7, 2009	E1998 to E2031
	May 7, 2009	Reporting Program- No. CI 7388 for Order No. 09-0057 NPDES Permit No. CAS004002 Waste Discharge Requirements Municipal Separate Storm Sewer System Discharges Within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein Attachment F on May 7, 2009	E2032 to E2054
		Petition from Building Industry Association - Ventura County (BIA)	
	May 29, 2009	Demand from Construction Industry Representatives for Recirculation of Tentative permit for the Ventura County MS4 System	E2055 to E2060

SB-AR-382

CITY OF SIGNAL HILL

2175 Cherry Avenue • Signal Hill, California 90755-3799

FAX TRANSMITTAL

TO: Marleigh Wood
Senior Staff Counsel
SWRCB
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814

Fax Number – 916-341-5199

FROM: Kenneth C. Farfsing
City Manager
City of Signal Hill
2175 Cherry Avenue
Signal Hill, CA 90755

Phone: 562-989-7302

SUBJECT: Comment Letter on the Ventura County MS4 Permit – Petition – SWRCB/OCC File A-2023

Dear Ms. Wood:

Please find a fax copy of the comment letter provide on behalf of the Coalition for Practical Regulation on the Ventura MS4 Permit Petition. Please do not hesitate to contact me if you have any questions regarding this.

13 Pages – Including FAX cover sheet

COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"

SB-AR-383

July 31, 2009 Via E-Mail and U.S. Mail

ARCADIA
ARTESIA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
CARSON
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRWINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWNDALE
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
RANCHO PALOS VERDES
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

Marleigh J. Wood
Senior Staff Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814

Subject: SWRCB/OCC File A-2023

Dear Ms. Wood:

I am writing on behalf of the City of Signal Hill and the *ad hoc* group of cities known as the Coalition of Practical Regulation[1] (collectively "CPR") to respond to SWRCB/OCC File A-2023, the Petition of the Building Industry Legal Defense Foundation et al ("Petitioners") in the matter of the Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater NPDES Permit, Order No. R4-2009-0057; NPDES Permit No. CAS004002. Thank you for the opportunity to provide these comments.

The CPR cities share the concerns expressed by the Petitioners regarding the fact that the Ventura County MS4 permit adopted on May 7, 2009 by the Los Angeles Regional Water Quality Control Board "is the result of a last-moment, radical overhaul of the tentative permit that was publicized by the Regional Board for public comment."[2] Regional Board staff and Ventura County permittees spent considerable time and energy working together, and had reached general consensus on what would constitute an effective, workable permit. Then, at the May 7 hearing, the Regional Board adopted a new version of the Permit based on what the Petitioners refer to as the "Secret Agreement" – a side agreement put together by two environmental organizations and three city managers who were not authorized to speak on behalf of other cities in Los Angeles County or the public at large. In short, this backroom deal, cut at the eleventh hour will end up shaping water quality policy for cities throughout Ventura and Los Angeles

[1] The Coalition for Practical Regulation is an *ad hoc* group of 39 small and medium sized cities in Los Angeles, representing 1.9 million Californians, that have come together to address water quality issues.
[2] Petitioners' Memorandum of Points and Authorities, p. 1

Counties, in violation of the notice and comment requirements under State and federal law. In taking the action they took, the Regional Board essentially "(1) capitulated to special interests over the public interests, (ii) turned its back on months and years of hard work by staff, (iii) gutted wholesale the land use provisions of the tentative permit, and (iv) substituted in their place requirements that were dictated verbatim to the Regional Board by non-governmental entities and uninformed representatives of the permittees."[3]

CPR will structure these comments to correspond with assertions made in the Petition. The assertions or portions of assertions being commented upon will precede CPR comments in boldface type.

4. Statement of Reasons Why the Regional Board Action Was Inappropriate or Improper:

Bullet 1. "The Regional Board's adoption of the Permit was in violation of due process requirements because the Board publicized (timely, more than 30 days prior to the May 7, 2009 date of adoption of the Permit) a tentative permit that was radically different from the Permit as it was ultimately approved." (p. 2)

- **"...any consideration of the Side Agreement by the Regional Board would necessitate a recirculation of a new tentative permit for public comments." (p.3)**

CPR Comments:

The Petitioners state in the Points and Authorities document submitted with and incorporated into the Petition that they, and the public at large, were denied due process of law and a fair opportunity to comment on the permanent retention requirements. Upon contacting the Regional Board, the Petitioners were told that Regional Board staff was "confident that the changes made to the MS4 permit at the hearing are indeed a logical outgrowth of the proceedings, and their inclusion did not unfairly prejudice any stakeholder."[4] Perhaps the Permit proposed by staff was a logical outgrowth of the proceedings; however, the permit adopted by the Regional Board was not. The Petitioners note that the decision in *Natural Resources Defense Council, Inc. v. USEPA* (9th Cir. 1988) includes the statement, "If the final rule deviates too sharply from the proposal..., affected parties will have been deprived of notice and opportunity to respond to the rule...The essential inquiry focuses on whether interested parties reasonably could have anticipated the final rulemaking from the draft permit." Clearly, in the case of the draft Ventura Permit under consideration at the May 7 2009 hearing, they could not.

[3] Petitioners' Memorandum of Points and Authorities, p. 1
[4] Petitioners' Memorandum of Points and Authorities, p. 7

The February Tentative Permit did not include a permanent retention requirement; the adopted Ventura Permit does include such a requirement. CPR agrees with Petitioners that this "radically shifts the goal of low impact development (LID)" from one of maintaining preconstruction hydrology to retaining all flows onsite. We also agree with the Petitioners that had the February draft circulated for public review included this requirement, there would have been considerable stakeholder comment. Inclusion of this requirement was, indeed, a fundamental policy shift on which stakeholders were not given sufficient time to comment, as it was created in the "Side Agreement" or "Secret Agreement." CPR agrees with Petitioners that due to the substantial policy shift based on a back room deal, it was incumbent upon the Regional Board to recirculate the Ventura Permit for public review and comment. For some reason, the Regional Board refused to do so. This alone requires the State Water Board to remand the Permit back to the Regional Board with direction to recirculate the Permit for a public comment period, as required by law.

Bullet 2. "The Ventura Permit unlawfully regulates matters not subject to NPDES program by requiring that all future development and redevelopment must retain on site diffuse surface water." (p. 3)

CPR Comments:

The Petitioners contend that the Ventura Permit regulates matters that "have nothing to do with either the waters of the United States or MS4 facilities within the County." Due to the new permanent retention requirements, Ventura County permittees are required to enact ordinances to prevent land development or redevelopment from occurring unless the projects resulted in the onsite retention of stormwater – regardless of whether or not surface flows would cause the "discharge of pollutants into or from the MS4.

This over-reaching mandate, which applies even to stormwater runoff that never enters an MS4 facility, is inappropriately broad for an MS4 permit. CPR agrees with Petitioners that the Los Angeles Regional Water Board must take heed of the requirement in Section 402(p) of the federal Clean Water Act that requires the Regional Board to regulate discharges of stormwater "from" MS4 facilities. In the Ventura Permit, the Regional Board goes too far.

Bullet 3. "...Although the requirements allow a limited infeasibility exception applicable to some development, even the mandate to retain storm water on site where feasible negates the legal feasibility of any and all environmentally preferable alternative project design features and mitigation measures. Specifically, environmentally preferable alternatives and mitigation measures that would otherwise be required pursuant to the California Environmental Quality Act ('CEQA') could not be pursued and required because of the arbitrary requirements set forth in the Ventura Permit." (p. 4)

CPR Comments:

The California Environmental Quality Act ("CEQA" – Public Resources Code Sections 21000 et. seq.) is a comprehensive statute that requires that governments analyze projects to determine whether or not they would result in significant adverse environmental impacts. If such significant adverse impacts are determined to be present by the lead agency under CEQA, they must be disclosed and reduced or mitigated to the extent feasible. If the adverse impacts remain the lead agency must adopt a Statement of Overriding Considerations. CEQA provides local entities the discretion to analyze and approve projects that are deemed appropriate for the local community following the environmental analysis directed by the statute, including analyzing the impacts of the project on water quality. One example of this discretion is the ability of municipalities to adopt a statement of overriding considerations if the public agency finds that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (Public Resources Code [PRC] Section 21081)

The Petitioners comment that "by requiring the permittees to enact general ordinances that would affect every parcel of land in Ventura County, regardless of any nexus to receiving waters within the Regional Board's purview, the Regional Board has crossed the line" and contradicts the discretion afforded to local entities by CEQA. By removing Ventura County Permittees' discretion under CEQA with regard to approving local developments, the Permit is in conflict with existing state law.

The Ventura County MS4 Permit directly conflicts with CEQA and unlawfully attempts to direct how a local agency is to approve a project. Under Public Resources Code section 21081.6(c), a responsible agency – in this case, the Regional Board - cannot direct how a lead agency – in this case, each co-Permittee - is to comply with CEQA's terms:

> "Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of an definitions applicable to, that agency. **Compliance or non-compliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit…the authority of the lead agency to approve, condition, or deny projects as provided by this division or any other provision of law."** (Emphasis added.)

In direct opposition to the terms of CEQA, the Los Angeles Regional Water Quality Control Board, through the Ventura Permit, imposes terms that expressly seek to "limit the authority of the lead agency to approve, condition, or deny projects."

PRC section 21081.1 also states that the lead agency's determination "shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167." It similarly states that the lead agency "shall be responsible for determining whether an environmental impact report, a negative declaration, or mitigated negative declaration shall be required for any project which is subject to this division." (PRC section 21080.1(a).)

Further, no additional procedural or substantive requirements beyond those expressly set forth in CEQA may be imposed upon the CEQA review process:

> "It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines." (PRC Section 21083.1.)

PRC Section 21001 provides that local agencies "should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." However, the conclusion in the Ventura MS4 Permit appears to be that all runoff from a wide class of new development and redevelopment projects will result in significant adverse impacts on the environment, and that such impacts must be mitigated by particular mitigation measures as prescribed by the permit. Thus, the Permit dictates the environmental review, without regard for CEQA's provisions, and eliminates a local agency's discretion to consider and approve feasible alternatives or mitigation measures – even if alternative measures might have a lesser effect on the environment.

In addition, PRC Section 21002 provides that, "the Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof." PRC section 21081(b) then establishes a mechanism for local agencies to approve projects with unmitigated adverse impacts, if they adopt a Statement of Overriding Considerations. The Ventura Permit's design standard requirements would eliminate a municipality's discretion to approve a project without the design standards being met, even if a municipality adopts a Statement of Overriding Considerations.

CPR agrees with the Petitioners' assertion that environmentally preferable alternatives and mitigation measures that would otherwise be required pursuant to the California Environmental Quality Act (CEQA) could not be pursued and required because of the arbitrary requirements set forth in the Ventura Permit. The Permit should be revised so as to not conflict with state law.

Further, CPR concurs with statements in the Points and Authorities document that the permanent retention requirement conflicts with both State and USEPA LID policies. USEPA states, "...the goal of any construction project is to design a hydrologically functional site that mimics predevelopment conditions. This is achieved by using design techniques that infiltrate, filter, evaporate, and store runoff close to its source." California State policy includes the statement that LID uses "site design and stormwater management to maintain the site's pre-development runoff rates and volumes." It further states, "LID practices include: bioretention facilities or rain gardens, grass swales and channels, vegetated rooftops, rain barrels, cisterns, vegetated filter strips, and permeable pavements." The Ventura Permit as adopted is inappropriately prescriptive with respect to LID practices required.

Bullet 4. "In numerous and profound ways, the Regional Board's adoption of the Ventura Permit is unsupported by substantial evidence; and the Regional Board failed to bridge "analytical gaps" among (i) the evidence in the record, (ii) the findings that it approved at the May 7th hearing, (iii) the goals of the laws that it is charged with implementing, and (iv) its ultimate decision reflected in the Ventura Permit." (p. 4)

CPR Comments:

CPR agrees with the Petitioners that the Regional Board was openly and improperly deferential to the "Secret Agreement." Board members were so enamored with the idea that environmentalists and a small group of city managers had reached an agreement, that they deferred to the "Secret Agreement" language, rather than bridge the analytical gaps in the permit.

A significant reason the analytical gaps were not adequately addressed was that the May 7th hearing proceedings were very confusing. The "Secret Agreement" group presented an agreement developed in response to the third draft permit, when the fourth draft permit was the one under discussion – a fact that garnered little, if any, notice. Discussions about municipal action levels (MALs) being removed in "Secret Agreement" language - despite their having been revised to be in accordance with the recommendations of USEPA and the State Water Board's Blue Ribbon Panel - related to the use of MALs in the third, not fourth, draft permit. Because of the introduction of the "Secret Agreement," even Board Members appeared to be confused. Vice-Chair Glickfeld said, "I really am having a little bit of difficulty in understanding...what you're here to tell us[5]."

Despite that confusion, Regional Board members repeatedly commented on their pleasure with the concept of the agreement. Chair Lutz described it as having "historic importance[6]," Board

[5] Transcript of May 7, 2009 LARWQCB Transcript, p. 136.
[6] Transcript of May 7, 2009 LARWQCB Transcript, p. 132.

Member Marin described it as "tremendous[7]," and Vice-Chair Glickfeld at one point referred to the NGO representatives and city managers who presented the Agreement as "the big four[8]." Board Members did, however, acknowledge that the development process behind the "Secret Agreement" was inappropriate. Board Member Marin stated, "the process by which you arrived at the agreement is one that's concerning, because it...does appear to be very closed and exclusive[9]." Vice-Chair Glickfeld noted, "the process was not right[10]," and Chair Lutz stated she was "not comfortable" that "some of the people who are going to be under this permit did not have an opportunity to be part of the collaboration process[11]." Board Member Blois, the sole dissenting vote, stated, "The fatal flaw is that two major stakeholders were summarily excluded[12]." The Board appeared willing to overlook that flaw, together with significant analytical gaps, due to enthusiasm for a so-called collaborative agreement that left many of the affected permittees and the public out of the process.

The fact that the "Secret Agreement" was presented to the Regional Board as an agreement that they had to either accept or reject in total contributed to the Boards' failure to bridge analytical gaps. One member of the city managers' group told the Board, "because of the concessions and the give and take that created that agreement, if one side or the other loses something they agreed to as part of it, neither side supports it[13]." Board members overlooked other pressing issues of concern in the permit due to their infatuation with a collaborative effort between NGOs and a few city managers, even though the process was exclusive and not transparent.

The Regional Board decided to adopt the permit – with the "Secret Agreement" language - hastily, rather than deal with some of the remaining issues. Board Member Marin said, "I think we're close enough that we can make a decision today. I'd rather make a decision today than have to do it 30 days from now[14]." Chairman Lutz's comments effectively sum up the general attitude of the Regional Board: "I am so impressed any time collaboration takes place. It creates win-win opportunities[15]." Although she acknowledged the problem that it appeared to be a closed process, the concept of purported collaboration seemed to be an overriding consideration. The Regional Board accepted the position of the NGOs and the three city managers, thereby adopting a permit that is "unsupported by substantial evidence," as the Petitioners assert.

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[7] Transcript of May 7, 2009 LARWQCB Transcript, p. 307-309.
[8] The reference to "the big four" was immediately amended to "the big five" when Vice-Chair Glickfeld remembered the fifth member of that group.
[9] Transcript of May 7, 2009 LARWQCB Transcript, p. 307-309.
[10] Transcript of May 7, 2009 LARWQCB Transcript, p. 361.
[11] Transcript of May 7, 2009 LARWQCB Transcript, p. 364.
[12] Transcript of May 7, 2009 LARWQCB Transcript, p. 360.
[13] Transcript of May 7, 2009 LARWQCB Transcript, p. 139.
[14] Transcript of May 7, 2009 LARWQCB Transcript, p. 307-309.
[15] Transcript of May 7, 2009 LARWQCB Transcript, p. 364.

Bullet 5. "...The Regional Board suddenly embraced the Side Agreement at the May 7th hearing...and gutted and replaced the land use provisions of the Permit on the spot, without any reconsideration of the Section 13241 factors. Any fair consideration of the Section 13241 factors as applied to the storm water retention requirements in the Ventura Permit would preclude their adoption." (p. 5)

CPR Comments:

CPR agrees with the Petitioners that the Regional Board's suddenly embracing the side agreement and substituting it for land use provisions of the draft permit that had been circulated for public comment required reconsideration of Section 13241 factors.

Sections 13241 and 13000 of the Porter-Cologne Act require consideration of a number of factors in not only establishing water quality policy and developing water quality standards, but also in developing applicable permit terms. The sudden decision to adopt the Side Agreement as replacement for the land use provisions of the tentative permit rendered any previous 13241/13000 consideration insufficient. Clearly, the required 13241/13000 considerations were not made for the "Secret Agreement" language that now constitutes the land use section of the Permit. This is inappropriate, particularly since significant new stormwater retention requirements appeared in this language.

The goal of the Porter-Cologne Act is to "attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible" (Water Code Section 13000). Section 13241 compels Water Boards to consider the following factors:

(a) Past, present, and probable future beneficial uses of water;
(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;
(c) Water quality conditions that could reasonably be achieved through a coordinated control of all factors which affect water quality in the area;
(d) Economic considerations;
(e) The need for developing housing in the region; and
(f) The need to develop and use recycled water.

It appears that, at the very least, Section 13241 factors (b), (c), (d) and (e) above, along with the policy considerations under Section 13000 (including the "economic, social, tangible and intangible benefits" of the terms of the Secret Agreement) require further consideration. The precipitous adoption of "Secret Agreement" language on the spot precluded an adequate analysis of the relationships between the new land use requirements and the environmental characteristics of the hydrographic units. It also precluded both a consideration of water quality conditions that

could reasonably be achieved through control of the various factors that affect water quality, and a thorough review of the economic considerations of the new requirements, as well the impacts on housing in the region. CPR supports the Petitioners' assertion that Section 13241 factors were not adequately considered by the Regional Water Board prior to adoption of the Permit and further asserts that the considerations under Section 13000 were similarly ignored.

Petition Item 6: The Action Requested of the State Board:

"Petitioners request the State Board to accept this Petition, suspend the Ventura Permit, declare that the Ventura Permit was issued in violation of due process, conduct a formal adjudication, declare the arbitrary retention policies presently in the Ventura Permit to be contrary to State and federal policy and law, and remand the Ventura Permit to the Regional Board for further proceedings consistent with the positions in this Petition and the law." (p. 6)

CPR Comments:

CPR supports the Petitioners' request. The Los Angeles Regional Water Board acted in violation of due process of the law and in a manner inconsistent with state law. CPR asks the State Board to take the actions requested to overturn the Ventura Permit and remand it to the Regional Board for the necessary proceedings.

Petitioners' Item 9. Statement Regarding the Issues in the Petition which Were Raised to the Regional Board, and Explanation of Why the Petitioner Could Not Raise All Objections:

"Because the Petitioners were naturally focused on the requirements reflected in the fourth tentative permit, taken as a whole (which was duly publicized for public review and comment), and not on the intruding Secret Agreement (which ultimately became the Ventura Permit's land use section), Petitioners had only limited ability and objectively perceived need to assemble evidence against and comment on the unprecedented land use aspects of the Ventura Permit." (p. 7)

CPR Comments:

The Petitioners note that they also were focused on the requirements in the February 24, 2009 tentative permit that was circulated for public comment and did not have adequate notice or opportunity to review and comment on the terms of the Secret Agreement. The Cities of Downey and Signal Hill, as well as the other CPR cities, were likewise focused on the contents of the Regional Board staff's proposed permit. In fact, written comments on the permit were due on

April 10, 2009. The agreement negotiated in private by Heal the Bay, the Natural Resources Defense Council, three Ventura County City Managers, and the Ventura County Public Works Director was also dated April 10, 2009.

Prior to the Regional Board hearing, staff published revisions to the proposed permit on April 30, 2009. This revised permit became the focus of attention between April 30, 2009 and the public hearing on May 7, 2009. Because the Petitioners and other interested parties were focused on noticed changes to the revised tentative permit a week before the hearing, the "Secret Agreement," the terms of which were not fully disclosed, was given little attention.

Petitioners' Item 10: Request for Hearing (p.8)

CPR Comments:

CPR supports the Petitioners' request that the State Water Board conduct a hearing on the matter of the Ventura Permit. The request to allow permittees and others to marshal and present evidence "concerning the unprecedented and unreasonable mandates currently reflected in the Ventura Permit" is completely reasonable and well-founded, particularly considering the fact that the adopted Permit based on the "Secret Agreement," is substantially different from the fourth draft tentative permit that the Regional Board had publicized for review.

Petitioners' Item 11: Request for Stay (p. 8)

CPR Comments:

CPR supports the Petitioners' request that "any application of the Ventura Permit be stayed pending resolution of this matter. CPR agrees with the assertion that "Allowing the Ventura Permit to operate without a stay will substantially harm Petitioners and the public at large, because land use planners and property owners would need to radically amend their land use planning constructs to conform to the on site retention mandates reflected in the Ventura Permit." CPR agrees that "substantial questions of law and fact remain," and that the Permit should not be enforced for the duration of the stay.

Conclusion and Recommendations

CPR member cities have been aware throughout the permit development process that the new Ventura Permit would be a model for other next generation MS4 permits in our region, and our cities participated in good faith in the public participation process as outlined by the Regional Board staff. We are extremely concerned that the Regional Board members, by their vote, have condoned private negotiations between a self-selected group of the permittees and the

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environmental community, private negotiations that excluded the public and other impacted stakeholders. The adopted permit does not reflect the reasoned approach that Regional Board staff undertook in working with Permittees to understand and address their concerns in order to craft a Ventura Permit that would address water quality issues in a productive and workable manner and to craft a "model" permit for the region. In fact, by adopting a Permit and by making substantial last minute changes, and given the fact that Permittees and the public had not been given adequate time to review the changes, the Regional Board appears to be sending the message that working with the public stakeholders and the interested regulated community agencies is not a priority.

This potential use of the Ventura Permit, issued based on a legally improper Secret Agreement, is all the more reason why the terribly flawed public notice and comment period surrounding the finally adopted Ventura Permit must be reviewed by the State Board, and the Permit sent back to the Regional Board for compliance with State and federal due process requirements and other applicable laws. I have nothing but respect for the "big four", however I cannot believe in retrospect that they intended their Secret Negotiations to exclude the input of the interested public, stakeholders and other public agencies that will be impacted by the new development regulations in the Ventura Permit. I also cannot believe in retrospect that they intended to exclude the Regional Board's own staff and engineers from the process. We were all led to believe that the agreement would serve as a model, so that the Board, the Cities and the environmental community could move beyond the cycle of litigation of the last decade. However, I'm afraid that the lack of transparency in these Secret Negotiations will only prolong the litigation into the next decade.

CPR encourages the State Board to strongly consider the assertions made by the Petitioners and to take the actions necessary to remedy the problems created by the Los Angeles Regional Board's precipitous adoption of a Permit, based in part on the "Secret Agreement." Specifically, CPR encourages the Board to overturn the Ventura Permit and remand it to the Regional Board in order for the significant questions of law and fact raised by the Petitioners to be addressed.

Thank you again for the opportunity to present these comments.

Sincerely,

Kenneth C. Farfsing, City Manager
City of Signal Hill
CPR Steering Committee

cc:

Andrew R. Henderson, Esq.
Building Industry Legal Defense Foundation
1330 South Valley Vista Drive
Diamond Bar, CA 91765

Ms. Tracy Egoscue, Executive Director
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Attn.: SWRCB/OCC File A-2023 (BIA Petition)

CPR City Managers/ CPR Members

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July 31, 2009

State Water Resources Control Board
Attn: Marleigh J. Wood
Senior Staff Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814
mwood@waterboards.ca.gov

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED and E-MAIL

Re: SWRCB/OCC File A-2023, Opposition to Petition for Review of the Los Angeles Region Water Quality Control Board's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002

Dear State Water Resources Control Board:

Ventura Coastkeeper is submitting this letter to emphasize its strong dissent to the petition for review of the Los Angeles Region Water Quality Control Board's ("Regional Board's") adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002 (collectively "Ventura County MS4 Permit") filed by the Building Industry Association of Southern California, Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality (collectively "Petitioners").

The Ventura Coastkeeper is a program of the Wishtoyo Foundation, a community based 501(c)(3) non profit grassroots organization with over 700 members consisting of Ventura County's diverse residents and Chumash Native Americans. Wishtoyo's mission is to preserve and protect diverse cultures and communities of people, and the environment that our current and future generations depend upon. Wishtoyo shares traditional Chumash Native American beliefs, cultural practices, songs, dances, stories, and values with the public in its Chumash Discovery

Village and through educational programs in schools to promote environmental awareness and natural resources stewardship.

In 2000, Wishtoyo founded Ventura Coastkeeper ("VCK"). VCK's mission is to protect, preserve, and restore the ecological integrity and water quality of Ventura County's inland and coastal waterbodies for all beings in the County's diverse community. The Ventura Coastkeeper believes that land, and its waterbodies, are interconnected communities to which all living entities belong and on which they must sustainably and harmonically coexist together. As such, the Ventura Coastkeeper strives to maintain clean and ecologically healthy waters through advocacy, education and outreach, scientific data generated by its Stream Team, legal enforcement, restoration projects, and community organizing and empowerment.

More than 15 years after urban stormwater runoff permitting took effect under the Clean Water Act, Stormwater (wet weather) and non-storm water (dry weather) discharges of pollutants from municipal storm drains have long impaired and plagued the water quality and ecological integrity of Ventura County's inland and coastal waterbodies. Stormwater and dry weather discharges from municipal storm drains carry high levels of sediment, oil, herbicides, nutrients, heavy metals, bacteria, pharmaceuticals and other pollutants from residential areas, industrial sites, and construction zones into Ventura County's streams and coastal waters. Without an adequate MS4 permit that includes sufficient Low Impact Development (LID) and redevelopment provisions to prevent urban development and its accompanying impervious surfaces from continuing to impair our waterbodies, these anthropogenic water quality impairments from municipal storm drains will surely be exacerbated by the population growth of Ventura County, which is projected to rise from 800,000 to over 1,000,000 residents by 2030.

Not only is the Ventura County MS4 permit, as adopted by the Regional Board, necessary to improve and restore the water quality and ecological integrity of Ventura County's waterbodies, but its Low Impact Development ("LID") and re-development provision received wholesale endorsement and support from environmental and municipal stakeholders - the parties responsible for implementing the permit and whose constituents interact with and depend upon ecologically healthy waterbodies and safe waterbodies for their environmental health and wellbeing. The Petitioners attempt to overturn and weaken the Ventura County MS4 permit as adopted, is not only an attempt to side skirt taking economically and logistically feasible action to best help prevent urban runoff from impairing and worsening the water quality of Ventura County's waterbodies, but it is socially irresponsible. The Petitioners and their corporate constituents profit greatly off of construction in Ventura County, but do not necessarily live in Ventura County or suffer from the contamination caused by urban runoff. This "profit, pollute, and run" approach by the Petitioners does not sit well with VCK and its constituents, especially VCK's economically and politically marginalized constituents, who shoulder the grunt of environmental polluting externalities in their own backyard, where almost all of their coastal

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waterbodies and local rivers and streams are un-fishable, un-swimmable, and un-touchable due to water quality impairments.

VCK would thus like to support in full, emphasize its concurrence with, and incorporate by reference Natural Resources Defense Council's ("NRDC's") and Heal the Bay's Opposition to Petition for Review: "In the Matter of California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002" submitted to the State Water Resources Control Board ("SWRCB") in opposition to the Petitioner's petition for review of the Regional Board's adoption of the Ventura County MS4 Permit. VCK not only fully concurs with and supports all of NRDC's and Heal the Bay's legal, policy, and scientific objections to the petition for review of the Ventura County MS4 Permit filed by Petitioners to the SWRCB, but concurs in full with all NRDC's and Heal the Bay's positions and arguments in support of the provisions of and adoption of the Ventura County MS4 permit by the Regional Board.

Thank you for your time and consideration.

Sincerely,

Jason A. Weiner
Associate Director and Staff Attorney
Ventura Coastkeeper

Mati Waiya
Executive Director
Wishtoyo /Ventura Coastkeeper

cc: Andrew R. Henderson, Esq.
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SB-AR-398

A-2023

From: "Garrison, Noah" <ngarrison@nrdc.org>
To: <mwood@waterboards.ca.gov>, <andrew@biasc.org>, <gerhardt.hubner@ventura...
CC: <dsmith@waterboards.ca.gov>, <eberhardt.doug@epa.gov>, <sunger@waterboar...
Date: 7/31/2009 5:28 PM
Subject: Opposition in SWRCB/OCC File A-2023, Petition of BIA in Ventura County MS4
Attachments: Opp to BIA Petition FINAL.pdf; NRDC Request for Notice FINAL.pdf

Dear Ms. Wood,

Attached please find NRDC and Heal the Bay's Opposition to Petition for Review in SWRCB/OCC File A-2023, Petition of Building Industry Legal Defense Foundation et al., in the Matter of the Ventura County MS4 Permit. Attached are the Opposition Memorandum, and a Request for Official Notice by the State Water Resources Control Board and associated documents. Please feel free to contact us if you have any questions,

Sincerely,

Noah Garrison

Noah Garrison

Project Attorney

Natural Resources Defense Council

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002	OPPOSITION OF NRDC AND HEAL THE BAY TO PETITION FOR REVIEW

I. INTRODUCTION

The Petition for Review, SWRCB/OCC File A-2023, filed by the Building Industry Association of Southern California, Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality (collectively, "Petitioners") is based on demonstrably inaccurate statements of fact and recycled legal arguments that have been litigated in California and resolved against Petitioners. The Petition appears to be an attempt to avoid taking clear and practicable action to control the unnatural, harmful water quality impacts caused by traditional

development and its associated impervious surfaces. As the record in this matter demonstrates, the Los Angeles Regional Water Quality Control Board's ("Regional Board") multi-year effort in adopting the Ventura Country Municipal Stormwater Permit ("Permit") is well supported by the evidence and the law, consistent with the efforts of other regulatory entities around the nation, and was endorsed specifically by the United States Environmental Protection Agency, which expressly supported the Permit, at its adoption hearing on May 7, 2009. For these reasons and the reasons set forth below, the Petition is completely without merit and should be denied.

A. Factual Background

Notwithstanding past stormwater permit programs, including runoff volume control and erosion control measures, significant water quality problems persist in Ventura County.[1] Indeed, Ventura County's own reports indicate that:

> [e]levated pollutant concentrations were observed at all monitoring sites during one or more monitored wet weather storm events, and at [specific sites] during one or more dry weather events.[2]

Moreover, "[p]olluted municipal stormwater runoff is one of the leading causes of water quality impairment in the Region." (Tentative Fact Sheet, at 3.) "Yet, more than a decade after the first [Ventura] permit was issued, we continue to see exceedances of water quality standards for stormwater pollutants such as bacteria and heavy metals." (Tentative Fact Sheet, at 8.) Impairments to the beneficial uses of water bodies in the Ventura watersheds include many of the pollutants of concern identified by the Ventura Countywide Storm Water Monitoring Program. (Tentative Fact Sheet, at 4.) Urban runoff also has been found to be cause significant impacts to aquatic life. (Tentative Fact Sheet, at 5.)

Traditional development – and its associated impervious surfaces in particular – plays a significant role in the creation of urban runoff and the degradation of waterways. "Development

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[1] *See* Ventura Countywide Stormwater Quality Management Program, Annual Report for Permit Year 6, Reporting Year 12 (October 2006), at 10-4.

[2] *Id.* at 9-3 (emphasis added).

and urbanization increase pollutant loads, volume and discharge velocity." (Permit, at Finding B.16.) As U.S. EPA has noted:

> Most stormwater runoff is the result of the man-made hydrologic modifications that normally accompany development. The addition of impervious surfaces, soil compaction, and tree and vegetation removal result in alterations to the movement of water through the environment. As interception, evapotranspiration, and infiltration are reduced and precipitation is converted to overland flow, these modifications affect not only the characteristics of the developed site but also the watershed in which the development is located.[3]

Thus, contrary to the impression created by Petitioners, experts are in agreement that it is development – not the ameliorative LID provisions adopted by the Regional Board – that alters the natural flow of water, while natural, pre-development runoff from a site is only a fraction of post-development runoff.[4] Moreover, "[s]tormwater has been identified as one of the leading sources of pollution for all waterbody types in the United States[,] [and] the impacts of stormwater pollution are not static; they usually increase with more development and urbanization."[5]

As the Regional Board explained, "[s]tudies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters . . . Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 3-10 percent conversion from natural to impervious surfaces in a subwatershed. Percentage impervious cover is [] one indicator and

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[3] U.S. Environmental Protection Agency (December 2007) Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices, at v ("EPA Cost Study").

[4] This fact is also demonstrated in analysis of Ventura County development by Dr. Richard Horner, which shows that the pre-development runoff from a given site constitutes only about 7% of the total annual precipitation falling on that site. (R. Horner (February 2007) Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County, at 9, Table 2 ("Horner Report"). Technical experts working for Petitioners readily acknowledge this; Mr. Eric Strecker noted in his hearing testimony that, "when you look at predevelopment hydrology in southern California, 80 to 95 percent of the predevelopment average annual precipitation is evapotranspirated. And then typically runoff or deeper infiltration is somewhere in the two to ten percent range depending on the conditions of site." (Transcript, at 271:11-16.)

[5] EPA Cost Study, at 1.

predictor of potential water quality degradation expected from new development." (Permit, at Finding at B.12.)

For these reasons, on May 7, 2009, the Regional Board adopted Low Impact Development ("LID") provisions regarding new development and redevelopment in Ventura County as part of the Permit.

LID stormwater management practices are designed to capture and retain (*i.e.*, not discharge) stormwater runoff through infiltrating water into the soil, vaporizing it to the atmosphere via evaporation and transpiration from vegetation, and harvesting stormwater to put to a beneficial use such as irrigation or gray water supply.[6] By retaining water onsite, LID attempts to restore natural conditions and results in drastically less polluted runoff compared to conventional BMPs. LID practices can reduce site runoff volume and pollutant loading to zero in many typical rainfall scenarios. Even treating stormwater with the best-performing conventional BMPs is much less effective than using LID practices to retain water with a low numeric requirement for Effective Impervious Area ("EIA").[7]

In the Permit, at issue here, the Regional Board embraced LID concepts in a practical and enforceable fashion by adopting an LID standard with a 5% EIA limitation, a provision that directly flows from the basic scientific and technical data and studies summarized above. The adopted standard is *not* a zero discharge standard, as Petitioners have claimed: "[M]ake no mistake, it's zero runoff, without any discharge." (Transcript, at 263:19-20.) This claim was thoroughly refuted by both EPA (Transcript, at 121:20-21 and Board Staff (Transcript, at 175:21 (stating that the Permit does not require the retention "of all rainfall").) The standard, in truth, allows runoff from 5% of the site's effective impervious area to discharge from a site during all rain events and also allows all runoff exceeding the modest, 85th percentile, 24-hour design storm to be discharged from the entire site. (*See* Permit, at ¶ 4.E.III.1.(c).) Additionally, the adopted

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[6] *See* Letter from Richard Horner to Regional Board (April 10, 2009), at Attachment A-1 ("Horner April 10 Letter").

[7] Id, at 1.

LID provisions contain relief from the 5% EIA limitation where infeasibility is demonstrated. (Permit, at ¶ 4.E.III.2.)

The Permit's overall LID approach is not as stringent as allowed by the evidence, as originally requested by environmental groups,[8] or as adopted in numerous other jurisdictions.[9] However, it serves as a collaborative compromise with the Permittees and was chosen by the Board over other, less stringent proposals that would have allowed significant discharge of pollution and that would not have resulted in effective, feasible mitigation of the various problems caused by stormwater runoff.[10]

B. Petitioners' Claims

Despite the obvious water quality and quantity problems associated with development and the importance of addressing these impacts in Ventura County, Petitioners challenge the adopted Permit on several fronts. In particular, Petitioners allege that: (1) Petitioners were denied due process; (2) the Regional Board's action was not supported by the evidence in the record or the findings; (3) the Regional Board violated Water Code § 13241; (4) the Regional Board exceeded its NPDES permitting authority; (5) the Permit infringes on local land use decision-making authority; (6) the Permit violates the Natural Flow Doctrine; and (7) the Regional Board failed to "harmonize" the Permit with CEQA.

At their core, Petitioners' claims all arise from a fundamental misconception of both what pre-development conditions in Ventura County comprise and what the challenged LID provisions in the Permit require. Petitioners claim that, in a "radical policy shift," "rather than seeking to mimic, maintain or approximate the natural, pre-development hydrology when developing or redeveloping land, [the challenged provisions seek] – through their proposed Permanent Retention Requirement – to require land planners, developers and builders **to completely arrest – rather**

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[8] Environmental groups requested a 3% EIA as more protective of waterways and resulting in less pollution loading. (*See* e.g., NRDC and Heal the Bay letters to Regional Board March 6, 2007; October 15, 2007; May 29, 2008, and April 10, 2009.)

[9] *See* section III.B.1, *infra*.

[10] Horner April 10 Letter at 4.

<u>than maintain</u> – the pre-development hydrological flows." (Petition Brief, at 3-4.)[11] As explained below, this claim could hardly be farther off target. Rather than arresting the pre-development flows from a site, as Petitioners claim, the challenged Provisions seek to return site runoff to an approximation of its pre-development conditions.

Ultimately, and once all the smoke and mirrors behind Petitioners' claims are cleared aside, only one claim remains: Petitioners simply do not like this Permit. Their subjective preferences, however, even when bolstered by rhetorical histrionics, do not constitute an actionable legal objection. For the reasons set forth below, all of their claims must fail.

II. STANDARD OF REVIEW

"[I]n order to uphold a Regional Board action," the State Water Resources Control Board ("State Board") need only "be able to find that the action was based on substantial evidence." (*In re Petition of Stinnes-Western Chemical Corp.*, State Board Order No. WQ 86-16, at 11.) The *Stinnes-Western* opinion upholds the regional board action in question as being "based on numerous facts and the record as a whole." (*Id.*) The State Board notes that the applicable standard requires "a search of the record for a 'reasonable factual basis.'" (*Id.* at 12.) Finally, it states that, just as the superior courts must defer to the water boards' expertise, the State Board must also "recognize the Regional Board's judgment in matters involving water resources and water quality." (*Id.*)

Thus, the State Board's role is not to decide how it would have acted if presented with the same facts, but, rather, to determine whether the Regional Board's action was supported by a reasonable factual basis.

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[11] Petitioners' Brief is replete with the claim that the LID standards "arrest" the natural flow of water: it appears no fewer than seven times. (*See* Petition Brief at 4, 8, 9, 11, 17.)

III. ARGUMENT

A. The Regional Board Did Not Violate Petitioners' Due Process Rights by Making Changes to the Proposal Before It

1. Proper Notice was Given, and Petitioners Had Extensive Input on the Permit's Provisions, including the Onsite Retention Issues

Petitioners claim they were "denied due process and a fair opportunity to comment on the permanent retention requirements." (Petition Brief, at 6.) However, the Regional Board more than complied with Water Code Section 13377 and with the federal procedural requirements for adopting NPDES permits. (40 CFR Part 124; *see In the Matter of National Steel and Shipbuilding Company,* State Board Order No. WQ 98-07, at 6.)

First, the Permit, at issue involved unprecedented public input with extensive opportunity for comment. Over the course of three years, Regional Board staff conducted 42 stakeholder meetings on this Permit. (Transcript, at 56:5-10.) The Board itself held two informational workshops, while a third scheduled for July 2008 had to be cancelled because of other litigation. *Id.* Essentially all stakeholders were present at many of the meetings held by the Regional Board. (Transcript, at 56:18-20.)

Second, Petitioners for years had more than ample notice regarding the staff's and Regional Board's consideration of a requirement to retain stormwater onsite when feasible. In fact, infiltration and retention requirements existed in *every previous public draft* of the Permit as part of the discussion surrounding EIA.

For example, the first public draft of the Permit in 2006 would have mandated that Permittees adopt a program requiring all new development and redevelopment projects to: "[m]imimize pollutants emanating from impervious surfaces by reducing the percentage of Effective Impervious Area to less than 5 percent of the total project area" and "[m]inimize the percentage of impervious surfaces on development lands to support the percolation and infiltration of storm water into the ground" (Dec. 27, 2006 Draft Permit, at 50.)

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The second draft of the Permit would have required additional infiltration and retention requirements:

> III. New Development/ Redevelopment Performance Criteria
> 1. Integrated Water Quality/ Resources Management Criterion
> (a) Permittees *shall* require that all New Development and Redevelopment projects identified in subsection 5.E.II *control pollutants, pollutant loads, and runoff volume emanating from impervious surfaces through percolation, infiltration, storage, or evapo-transpiration*, by reducing the percentage of Effective Impervious Area (EIA) to less than 5 percent of total project area.
> (b) Impervious surfaces *may be rendered "ineffective" if the storm water runoff is*:
> (1) *Drained into a vegetated cell*, over a vegetated surface, or through a vegetated swale, having soil characteristics either as native material or amended medium using approved soil engineering techniques; or
> (2) *Collected and stored* for beneficial use such as irrigation, or other reuse purpose; or
> (3) Discharged into an *infiltration* trench.
> (c) Any excess surface discharge of the storm water runoff shall be mitigated in accordance with Part5.E.III.4.

(August 28, 2007 Draft Permit, at ¶ 5.E.III. (emphasis added).) The third draft contained almost identical language. (*See* April 28, 2008 Draft Permit, at ¶ 5.E.III.)

Throughout this process, Petitioners were not only aware of the onsite retention issue, but it became the central component of the public dialogue surrounding the Permit. Indeed, after the first draft of the Permit was released, NRDC submitted a comment letter on March 6, 2007, that included a study by national stormwater expert Dr. Richard Horner. Dr. Horner's study presented extensive discussion of the viability of, and need for, a strict EIA standard to protect water quality in Ventura County. In particular, Dr. Horner found that, in nearly all case studies, "all storm water discharges could be eliminated at least under most meteorological conditions by dispersing runoff from impervious surfaces to pervious areas."[12] He also found that "effective Impervious Area (EIA) can practicably be capped at three percent, a standard more protective than that proposed in the draft permit."[13]

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[12] Horner Report, at 15

[13] *Id.* at 1.

When the Regional Board held a public hearing on the second draft of the Permit in September 2007, NRDC presented a PowerPoint on its concerns with the Permit's LID requirements, noting that "[t]o be rendered "ineffective" [for purposes of meeting the EIA standard], *impervious surfaces must drain to areas where stormwater can infiltrate or to storage containers for reuse.*"[14] One month later, NRDC and Heal the Bay submitted formal comments on the second draft in the record and specifically stated that "[i]n order for surfaces to be rendered truly 'ineffective,' *all rainwater falling on them must be infiltrated or captured and reused.*"[15] These comments indicate the extent to which–two years ago–strong emphasis was placed on the importance of ensuring both that stormwater under the design storm condition would not enter the storm sewer system and that the Permit would require onsite retention practices involving infiltration and harvest and reuse. This dialogue continued throughout the permitting process.

On July 7, 2008, the Regional Board cancelled its third scheduled workshop on the draft Permit due to a lawsuit brought by Petitioner Building Industry Legal Defense Fund, among others, against the Regional Board.[16] Since the Permit was put on hold, the Permittees approached NRDC and Heal the Bay to resolve differences of opinion collaboratively and to present a joint proposal to the Regional Board regarding LID practices. The Permittees retained consultants to study the issues.[17] Dr. Richard Horner provided a critical rebuttal where necessary[18] and both the study and the rebuttal were submitted as part of the administrative record. The Permittees and the environmental NGOs worked together through spring 2009 on this effort, resulting in the noteworthy consensus language that was eventually adopted by the Regional Board.

Meanwhile, Petitioners and NRDC also were engaged in discussions over other stormwater permits in California where similar issues were being examined. (Transcript, at 129:21-130:8.)

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[14] Sept. 20, 2007 NRDC Powerpoint Presentation, at 5 (emphasis added).

[15] *Id.* at 7 (emphasis added).

[16] Regional Board (July 7, 2008) Notice of Cancellation of Workshop.

[17] *See* Geosyntec (January 2009) Low Impact Development Metrics in Stormwater Permitting.

[18] *See* Richard Horner (February 2009) Critique of Certain Elements of "Low Impact Development Metrics in Stormwater Permitting."

Importantly, the Ventura County Permit issues did not exist in a vacuum, as Petitioners suggest. Similar LID discussions were ongoing simultaneously in Orange County, where the Santa Ana Regional Board was considering similar LID requirements.[19] During this period of discussion, on March 6, 2009, representatives from NRDC met with Petitioners' representatives Andrew Henderson and Dr. Mark Grey to discuss general approaches to LID standards and disagreements regarding onsite retention. (*See* Transcript, at 320:20-321:9.)

Later that month, on March 24, 2009, the Permittees and environmental NGOs spoke with Petitioners' representatives Andrew Henderson and Dr. Mark Grey about the consensus language for the Ventura Permit, and NRDC attorney Bart Lounsbury emailed the consensus language to Mr. Henderson and Dr. Grey.[20] One week later, on April 1, 2009, the Permittees and environmental NGOs again spoke with Petitioners' representatives about the consensus language, and Petitioners responded specifically to the onsite retention requirement.

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[19] The North Orange County MS4 permit was recently adopted with similar LID provisions and has not been challenged by Petitioners, even though Petitioners were active participants in those permit discussions. The permit itself includes very similar requirements to the Ventura County Permit: "The permittees shall . . . require that each priority development project infiltrate, harvest and re-use, evapotranspire, or bio-treat the 85th percentile storm event ("design capture volume"). . . . Any portion of the design capture volume that is not infiltrated, harvested and re-used, evapotranspired or bio-treated onsite by LID BMPs shall be treated and discharged in accordance with the [alternative compliance] requirements set forth … below." (North Orange County Permit, at ¶ XII.C.2.) Petitioners specifically addressed this requirement well before the Ventura County Permit was adopted: "[T]he permit requirements … could be met only by designing and constructing for the on-site retention – for infiltration, evapotranspiration or on-site reuse – of the volume of a design storm. Notwithstanding the appendage of mitigation options where infeasibility exists, as proposed, the cited provisions would seemingly impose . . . a generally-applicable requirement that no water (from a design storm) should leave a parcel that has been developed or redeveloped." (BIA Letter to Santa Ana Regional Board (April 9, 2009) at 3 (emphasis eliminated).

[20] We do not provide a copy of the March 24 email here, though we believe it could be provided to the State Board consistent with Cal. Evidence Code if so requested. Moreover, Petitioners have acknowledged they were briefed on the joint proposal well prior to the May 7, 2009 hearing. (*See* Transcript, at 319: 8-10).

Ultimately, the Permittees and environmental NGOs submitted the consensus language in a joint comment letter to the Regional Board on April 10, 2009 – within the public comment period – regarding the fourth draft of the Permit.[21] And, while Petitioners claim in their brief that the Regional Board's fourth draft merely "hinted" at onsite retention, (*see* Petition Brief, at 3), Petitioners' various April 10, 2009 comment letters devoted a full five pages to onsite retention and belie this claim.[22] The Regional Board staff, in its Response to Comments issued before the adoption hearing, also discussed the onsite retention requirement extensively. (Response to Comments, at 42.) All of this notwithstanding, Petitioners still had nearly a month to prepare any necessary additional comments for the May 7, 2009 Board hearing at which they reasonably knew that the environmental groups and the Permittees would be presenting suggestions for an onsite retention requirement. Petitioners even retained Mr. Eric Strecker of Geosyntec to testify on that particular issue at the May 2009 hearing.[23]

Given the considerable amount of attention devoted to onsite retention-based LID practices and the years' worth of debate surrounding this issue, it is baffling that Petitioners claim some deficiency in the permitting process that supposedly prevented them from addressing this issue adequately.[24] Petitioners' own extensive discussion of the issue in their own comment letters

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[21] Letter from NRDC, Heal the Bay, and Ventura County Stormwater Permittees to Regional Board (April 10, 2009).

[22] *See* Building Industry Association Letter to Regional Board (April 10, 2009) at 7-10 ("BIA April 10 Letter"); Construction Industry Coalition on Water Quality Letter to Regional Board (April 10, 2009) at 3-5 ("CICWQ April 10 Letter").

[23] *See* Transcript, at 255: 16-21.

[24] Respondents NRDC and Heal the Bay have reason to believe that additional information in the record highlights Petitioners' extensive notice of this issue. However, the Regional Board has informed Respondents that the administrative record will not be available until August 3, the deadline for responses to the Petition. *See* attached Letter from Tracy Egoscue, Regional Board, to NRDC (July 22, 2009). Respondents object to not being provided the record before the State Board deadline and object to State Board staff counsel's prior denial of our request for an extension of time to file this response. *See* attached Letter from Marleigh Wood, State Board, to NRDC (July 16, 2009). Respondents reserve all rights to provide additional information once the record is available.

makes their claims not just baffling, but downright disingenuous. To arrive at their present state of wonderment, Petitioners must have deliberately ignored NRDC's and Petitioners' numerous comment letters, slept through the testimony presented at Board workshops, and not listened during conference calls and meetings in which they participated. While Petitioners now feign shock at the final Permit language, all that has really changed regarding the LID provisions of the Permit is the amount of water that must be retained onsite. Indeed, as discussed below, the adopted LID provisions represent simply an evolutionary refinement of what it means for effective impervious area to be rendered "ineffective," an issue that has been discussed and noticed publicly since the Permit's inception.

2. The Adopted Language Is a Logical Outgrowth of the Draft Permit

Petitioners further claim that the Regional Board deprived them of due process by making changes to the proposed Permit and not re-circulating a revised version for another round of public comment. (*See* Petition Brief, at 6-8.) This assertion ignores not only the clear language of the proposed Permit and of the provisions ultimately adopted by the Regional Board, but also the nearly three years' worth of public hearings and comment letters raising the issue of an onsite retention standard, Petitioners' acknowledgment that they had seen the language proposed by the Permittees[25] and ultimately adopted in the Permit, and the more than five pages of discussion of the challenged requirements in Petitioners' own comment letters. This claim simply has no merit, as the adopted language was a logical outgrowth of the draft Permit.

A "final [order] that varies from the proposal, even substantially, will be valid so long as it is 'in character with the original proposal and a logical outgrowth of the notice and comments.'" (*Environmental Defense Center, Inc. v. E.P.A.* (9th Cir. 2003) 344 F.3d 832, 851.) Courts have repeatedly affirmed this principle since "a contrary rule would lead to the absurdity that . . . the

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[25] *See* Transcript, at 319: 8-10 (Dr. Mark Grey stating that "we were briefed [on the proposed language] and 'we,' that included our general counsel Andy Henderson and myself, perhaps a month ago.

agency can learn from the comments on its proposals only at the peril of starting a new procedural round of commentary." (*Natural Resources Defense Council, Inc. v. Thomas* (D.C. Cir. 1988) 838 F.2d 1224, 1242; *Trans-Pacific Freight Conference of Japan/Korea v. Federal Maritime Comm'n* (D.C. Cir. 1980) 650 F.2d 1235, 1249.) Thus, in stating that "[a]gencies, are free – indeed, they are encouraged – to modify proposed rules as a result of the comments they receive," (*Northeast Maryland Waste Disposal Authority v. E.P.A.* (D.C. Cir. 2004) 358 F.3d 936, 951), courts have held that an "[a]gency's change of heart . . . only demonstrates the value of the comments it received." (*Arizona Public Service Co. v. E.P.A.* (D.C. Cir. 2000) 211 F.3d 1280, 1300.)

In order to determine the adequacy of notice by an agency, courts apply a "logical outgrowth" test. The test concerns "whether a new round of notice and comment would provide the *first* opportunity for interested parties to offer comments that could persuade the agency to modify its rule." (*Environmental Defense Center, Inc.*, 344 F.3d at 851 (emphasis added).) Under this standard, a permit or order "is deemed a logical outgrowth if interested parties 'should have anticipated' that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." (*Northeast Maryland Waste Disposal Authority*, 358 F.3d at 952.)

This test is more than satisfied by the facts here. First, previous versions of the Permit included similar requirements and concepts to those that Petitioners now critique and erroneously claim constitute a "surprise." Petitioners argue that "apart from one small internally inconsistent facet," the February 2009 Draft Permit "provided no hint that the Regional Board would consider the Permanent Retention Requirement." (Petition Brief, at 8.) While the permits are not identical, this claim ignores the clear language of the EIA standard, both in the February 2009 Draft Permit and the adopted Permit. The February 2009 Draft Permit stated:

> (b) The goal of the New Development and Redevelopment standards shall be to reduce the effective impervious area (EIA) to 5% or less. . .
>
> (c) All features structured constructed [sic] to render impervious surfaces "ineffective" as described in provision (b), above, shall be properly sized to infiltrate or store for beneficial reuse at least the volume of water that meets the criteria in subpart 5.E.III.3 [referring to "the 85th percentile 24-hour storm

event" or "The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment. . . ."]

(February 2009 Draft Permit, at ¶ 5.E.III.1.(b)-(c).) Compare the draft language, above, with the language ultimately adopted by the Regional Board:

> (b) Impervious surfaces may be rendered 'ineffective' and thus not count toward the 5 percent EIA limitation, if the stormwater runoff from those surfaces is fully retained onsite for the [85th percentile 24 hour runoff event]. . .
>
> (c) The permittees shall require all features constructed or otherwise utilized to render impervious surfaces 'ineffective,' . . . to be properly sized to infiltrate, store for reuse, or evapotranspire, without any runoff at least the volume of water that results from:
> (1) The 85th percentile 24 hour runoff event. . . ;
> (2) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment. . .

(Permit, at ¶ 4.E.III.1.(c).) The onsite retention standards of the February 2009 Draft Permit and of the adopted Permit both require the onsite retention of the design storm volume – through infiltration or storage and through infiltration, onsite storage, or evapotranspiration, respectively. The differences in language between the two versions reflect variations on a narrow theme, not a "radical" shift in policy as Petitioners assert.

Second, Petitioners' own comment letters – and those of other stakeholders – extensively discuss whether the Permit should require the retention of a specific volume of water, as required in other MS4 permits. Petitioners explicitly acknowledged the existence of a retention requirement in previous versions of the Permit, noting in comment letters that the "permit language and a recently surfaced Ventura County City Manager-NGO propopsal[26] both attempt to narrow developer choices in selecting and sizing LID BMPs by restricting BMPs to only those that infiltrate or store rainfall for beneficial use. In other words, each project would require zero

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[26] In fact, as noted above, Petitioners were specifically provided the language ultimately adopted in the Permit by the NRDC in an email on February 24, 2009.

discharge of a design storm volume with no runoff whatsoever allowed."[27] Though we dispute that the Permit imposes any sort of "zero-discharge" standard (Section I.A, *supra*), Petitioners were aware of, and specifically opposed, the imposition of a retention standard. Petitioners stated that: "[m]andating the complete on-site retention of any sizable storm volume . . . is not a reasonable approach"[28]; the onsite retention provision "is a radical measure that should not be undertaken"[29] and "[w]e respectfully urge the Board and staff to reject any embrace of a new *universal retention doctrine*."[30] Petitioners' awareness of, and response to, the retention concept belies any assertion that Petitioners were "shocked" by the inclusion of an onsite retention standard in the Permit.[31]

The case law clarifies that Petitioners' own comment letters can function as an indicator of the adequacy of the Regional Board's notice: "[A]lthough they may not provide the only basis upon which an agency claims to have satisfied the notice requirement, comments may be adduced as evidence of the adequacy of notice." (*Miami-Dade County v. E.P.A.* (11th Cir. 2008) 529 F.3d 1049, 1059; *Northeast Maryland Waste Disposal Authority*, 358 F.3d at 952.) Notwithstanding all of the public discussion and the prior versions of the Permit, it is inconceivable that Petitioners would have devoted such extensive attention to an issue that they considered to be of no concern.

Even without Petitioners' comment letters, the Permit's final provisions represent a "logical outgrowth" of preceding versions of the Permit and constitute a *refinement* of what it means for an impervious area to be rendered "ineffective." Far from being the "*fundamental policy shift*" that Petitioners claim, (Petition Brief, at 8.), the altered language merely clarifies the

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[27] CICWQ April 10 Letter, at 3; *see also* BIA April 10 Letter, at 7 ("As proposed, the provision would seemingly impose, for the first time, a generally-applicable requirement that no storm water (from a design storm) should leave a parcel that has been developed or redeveloped.")

[28] CICWQ April 10 Letter, at 4.

[29] BIA April 10 Letter, at 8.

[30] *Id.* at 10.

[31] *See* CICWQ April 10 Letter, at 3-5; BIA April 10 Letter, at 7-10.

term "ineffective" and reflects the debate over LID requirements that occurred from the release of the first draft of the Permit through its ultimate adoption. As stated in subsection III.A.1, *supra*, beginning in 2007, NRDC and Heal the Bay had expressed that "[t]o be rendered 'ineffective' . . . impervious surfaces must drain to areas where stormwater can infiltrate or to storage containers for reuse."[32] The alteration so derided by Petitioners represents exactly the type of change found consistently by courts to represent a "logical outgrowth" of the original proposal. (*See, e.g., Environmental Defense Center, Inc.*, 344 F.3d at 852 (the adopted option "contains no elements that were not part of the original rule, even if they are configured differently in the final rule. Petitioners had, and took, their opportunity to object to the aspects of the Rule that they did not support in their comments. . . ."); *Northeast Maryland Waste Disposal Authority*, 358 F.3d at 952 (final order that collapses . . . proposed rule's three categories into two, is a logical outgrowth of the proposed rule").)[33]

B. The Regional Board's Actions Are Fully Supported by Substantial Evidence in the Record

Evidence supporting the LID standards pervades the Record. There is, in fact, substantial evidence in the record, discussed *infra*, supporting an EIA limitation *more* stringent than the limitation adopted by the Regional Board. Petitioners' claim that "the Regional Board lacked any substantial evidence to support its embrace of the Permanent Retention Requirement" ignores an

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[32] Sept. 20 2007, NRDC Powerpoint, at 5.

[33] Further, the cases cited by Petitioners for the proposition that due process has been denied are readily distinguishable from the instant case. For example, in *Small Refiner Lead Phase-Down Task Force v. U.S.E.P.A*, (Petition Brief, at 7), the court found that alterations to the rule in question would result in the rule's application to an entirely new class of persons and businesses, never previously subject to the rule in prior noticed drafts. ((D.C. Cir. 1983) 705 F.2d 506, 548.) This is entirely unlike the current situation, in which the adopted provisions merely refine the application of requirements that were present in multiple previous drafts of the Permit. Further, in upholding one portion of an adopted rule as a logical outgrowth of the proposal, the *Small Refiner* court noted that the plaintiff "was almost surely *in fact* aware that . . . others had proposed" the standard ultimately adopted, (*id.*), just as Petitioners were aware of the proposed language ultimately adopted in the Permit.

overwhelming number of reports, studies, and comments submitted during the more than two years of deliberation over the Permit.

Petitioners' claim, moreover, wrongly assumes that the substantial evidence test requires that *all* evidence must support the Regional Board's decision. To the contrary, the test requires only that, in light of the entire record, there must be substantial evidence to support the decision: "Under the substantial evidence test, courts do not reweigh the evidence. They determine whether there is any evidence (or any reasonable inferences which can be deduced from the evidence), whether contradicted or uncontradicted, which, when viewed in the light most favorable to an administrative order or decision or a court's judgment, will support the administrative or judicial findings of fact." (*Antelope Valley Press v. Poizner* (2008) 162 Cal.App.4th 839, 849, n.11; *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (July 21, 2009 E042229) ___ Cal.App.4th ___ [2009 WL 2152506] at 16 (stating that whether city "could have reached a different conclusion than it did based upon the evidence . . . is not our concern. . . . [I]n substantial evidence review[,] it does not matter whether evidence is contradicted or other reasonable inferences could be drawn") (internal citation omitted).)

Here, the record contains overwhelming evidence to support the decision of the Regional Board. The potential existence of evidence that could be viewed as unfavorable to the Regional Board's decision has no bearing on whether substantial evidence in the record supports the Permit's requirements.

1. The EIA and On-Site Retention Standards Are Fully Supported

Substantial evidence supporting the technical viability of the Permit's LID provisions was provided to the Regional Board as early as 2007 and has been consistently referenced and buttressed through comments and technical reports submitted since that time. Dr. Horner's study, in particular, extensively discusses the viability of and need for a strict EIA standard to protect water quality in Ventura County. Dr. Horner found that "Effective Impervious Area (EIA) can practicably be capped at three percent, a standard more protective than that proposed in the draft permit," and concluded that such a standard is warranted: "[i]n order to protect the biological

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habitat, physical integrity, and other beneficial uses of the water bodies in Ventura County, effective impervious area should be capped at no more than three percent."[34]

Numerous studies in the record bolster this conclusion. The Ocean Protection Council, for example, recommends that, "Regulated development projects shall reduce the percentage of effective impervious area to less than five percent of total project area by draining stormwater into landscaped, pervious areas."[35] A comprehensive National Academy of Sciences study on stormwater management further details the detrimental effects of effective impervious area on watershed health.[36] In all, NRDC submitted well over seventy reports, technical studies, copies of stormwater regulations from across the country, and other documents that demonstrate the effects of urban runoff and impervious surfaces on watershed health, as well as the ability of LID practices to reduce such runoff.[37] These many sources of information provide more than substantial evidence for the inclusion of an EIA standard in the Permit and highlight the pollution-reduction efficacy of the adopted LID practices.

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[34] Horner Study, at Attachment A-4.

[35] Ocean Protection Council of California (January 2008) State and Local Policies Encouraging or Requiring Low Impact Development in California, at 27. The report found that "the importance of imperviousness cannot be under-stated and is well known as an indicator of watershed health . . . limiting effective impervious surface coverage on individual sites has emerged as the preferred regulatory instrument for limiting the effects of impervious surfaces." (Id. at 6.)

[36] National Academy of Science, Committee on Reducing Stormwater Discharge Contributions to Water Pollution, National Research Council (2008) Urban Stormwater Management in the United States, at 17-20.

[37] *See, e.g.* Center for Watershed Protection (March 2003) Impacts of Impervious Cover on Aquatic Systems; Southern California Coastal Water Research Project (December 2005) Managing Runoff to Protect Natural Streams: The Latest Developments on Investigation and Management of Hydromodification in California, at i ("Physical degradation of stream channels . . . in the semi-arid portions of California appears to occur between 3% and 5% impervious cover."); See generally, NRDC and Heal the Bay letters to Regional Board and supporting documents submitted March 6, 2007; October 15, 2007; May 29, 2008, and April 10, 2009.

The feasibility of onsite retention standards, like the Permit's EIA limitation, has been recognized in other jurisdictions within California and throughout the country. The following jurisdictions provide examples of standards similar to those in the Permit:

> **Anacostia, Washington, D.C.:** Retain onsite the first one inch of rainfall and provide water quality treatment for rainfall up to the two-year storm volume;[38]
>
> **Central Coast, California (RWQCB, Phase II):** Limit EIA at development projects to no more than 5% of total project area (interim criteria); establish an EIA limitation between 3% and 10% in local stormwater management plans (permanent criteria);[39]
>
> **Federal Buildings over 5,000 square feet** (under EPA's draft guidance for implementation of the Energy Independence and Security Act of 2007): Manage onsite (*i.e.*, prevent the offsite discharge of) the 95th percentile storm through infiltration, harvesting, and/or evapotranspiration;
>
> **Pennsylvania:** Capture at least the first two inches of rainfall from all impervious surfaces and retain onsite at least the first one inch of runoff (through reuse, evaporation, transpiration, and/or infiltration); at least 0.5 inch must be infiltrated;[40]
>
> **Philadephia, PA:** Infiltrate the first one inch of rainfall from all impervious surfaces; if onsite infiltration is infeasible, the same performance must be achieved offsite; and[41]
>
> **West Virginia:** Retain onsite the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation.[42]

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[38] Anacostia Waterfront Corporation (June 1, 2007) Final Environmental Standards, at 16; *See also*, State Water Resources Control Board (December 2007) A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption, at 20-21.

[39] Central Coast Regional Water Quality Control Board, Letter from Roger Briggs re Notification to Traditional, Small MS4s on Process for Enrolling under the State's General NPDES Permit for Storm Water Discharges (Feb. 15, 2008) ("Central Coast Phase II Letter").

[40] Pennsylvania Department of Environmental Protection (December 30, 2006) Pennsylvania Stormwater Best Management Practices Manual, Chapter 3, at 7.

[41] City of Philadelphia, Philadelphia Stormwater Regulations § 600.5; City of Philadelphia (2006) Philadelphia Stormwater Management Guidance Manual: Version 2.0, at 1-1, Appendix F.4.1.

[42] State of West Virginia (June 22, 2009) Department of Environmental Protection, Division of Water and Waste Management, General National Pollution Discharge Elimination System Water Pollution Control Permit, NPDES Permit No. WV0116025, at 13-14 ("West Virginia Permit").

The widespread implementation of onsite retention standards (several of which are more stringent than the Permit's provisions) to reduce polluted stormwater runoff indicates the broad feasibility of such standards.

Substantial evidence also supports the inclusion of the 30% EIA limitation for cases of demonstrated infeasibility. Under the Permit, development and redevelopment sites within Ventura County will be required to retain 80 percent of the annual rainfall at a site (based on the 80% annual volume capture calculation method in ¶ 4.E.III. of the Permit). In cases of demonstrated infeasibility, a site will be allowed to discharge 30% of this volume, or 24% of the total annual rainfall volume (30% of the 80% volume). Subtracting this 24% volume of water from the volume required under the retention standard, a site demonstrating infeasibility would therefore be required to retain only 56% of the total annual onsite rainfall. This correlates with the findings of the Horner study. The Horner study found that for the vast majority of sites, 100% of the total annual rainfall could be retained onsite, and thus no discharge whatsoever would be required. However, even in the most challenging of circumstances, the Horner study determined a site would be able to retain approximately 60% of the total annual rainfall volume.[43] Thus, the 30% EIA standard merely reflects the lower limit of the achievable retention volume in Ventura County.

This approach to infeasibility has been applied in other stormwater permits. The West Virginia Permit, for instance, allows alternative compliance in cases of infeasibility "for up to 0.6 inches of the original obligation at a 1:1.5 ratio,"[44] effectively allowing for demonstrated infeasibility to reduce retention requirements, with proper alternative compliance, by 60 percent. The approach taken in the Ventura Permit is neither unwarranted, nor novel.

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[43] *See* Horner Report, at Table 5; Table 9.

[44] West Virginia Permit, at 15.

2. The LID Standard Provides Significant Benefits Over Conventional BMPs

The Ventura Study and other documents and studies contained in the record detail the substantial benefits that LID and the imposition of an EIA standard provide in comparison to conventional BMPs. As noted in the Ventura Study:

> [B]y retaining water from the site to meet a 3% EIA standard, LID practices result in drastically less polluted runoff compared to conventional BMPs (reducing site runoff volume and pollutant loading to zero in many typical rainfall scenarios). Even treating stormwater with the best-performing conventional BMPs is much less effective than using LID practices to retain water with a strong numeric requirement like 3% EIA.[45]

Thus, Dr. Horner concluded, the Permit's approach is "feasible and practicable … [for] maintaining the natural hydrology of land being developed," and "a lower EIA [limitation] is a feasible and practicable way to eliminate the discharge of pollutants that could cause or contribute to violations of water quality standards."[46] Importantly, this conclusion is based on a site's ability to retain its *total* annual rainfall volume, as opposed to merely retaining the 85th percentile storm, as the Permit requires.

This evidence is supported further by the comments of EPA, which endorsed the specific language adopted in the Permit, at the May 7 hearing. EPA stated that "the language that was submitted in the April 10th comment letter from the cities and the NGOs . . . provides a sound basis for this permit," and with its inclusion, "the permit would deserve to be adopted." (Transcript, at 120: 25-121:1; 121:9-10; 19-20.) This ample evidence in the record demonstrates that the imposition of the LID standards in the Permit is warranted and will reduce pollutant loads to receiving waters in Ventura County with greater success than conventional BMPs.[47]

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[45] Horner April 10 Letter, at 1.

[46] Horner Report, at 15.

[47] This conclusion was acknowledged by Board Staff at the May 7 Hearing, as Section Chief Unger stated, under cross examination, that use of the LID practices ultimately adopted "reduces the impacts to surface waters." (Transcript, at 183:7.)

3. LID Is Cost-Effective and Provides Significant Economic Benefits

Evidence in the Record, cited by the Regional Board in the Permit's (Tentative) Fact Sheet, highlights the economic benefits and cost-effectiveness of implementing the Permit's LID requirements. As EPA has noted, "In most cases, LID practices were shown to be both fiscally and environmentally beneficial to communities. …[I]n the vast majority of cases, significant savings were realized due to reduced costs for site grading and preparation, stormwater infrastructure, site paving, and landscaping. Total capital cost savings ranged from 15 to 80 percent when LID methods were used." (Tentative Fact Sheet, at 53-54.)[48]

NRDC provided the Regional Board with EPA's full study on "The Economics of Low Impact Development," which found that "Low-impact development (LID) methods can cost less to install, have lower operations and maintenance (O&M) costs, and provide more cost-effective stormwater management and water-quality services than conventional stormwater controls. LID also provides ecosystem services and associated economic benefits that conventional stormwater controls do not."[49] NRDC also submitted comments showing that the implementation of LID retention-based practices can have other significant economic benefits, including reductions in the cost of water for end-users. NRDC's analysis demonstrated that, based on the cost of water supplied by the Metropolitan Water District of Southern California, which serves Ventura County,[50] the water retained by LID practices at six typical developments could result in savings ranging from $158 to $263 per year for a small, 3,200 square-foot restaurant to $25,248 to $42,080 dollars per year for a large residential development.[51] In sum, substantial evidence in the record

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[48] EPA Cost Study at iv.

[49] ECONorthwest (November 2007) *The Economics of Low-Impact Development: A Literature Review*, at 14. at iii ("ECONorthwest Study").

[50] *See* Metropolitan Water District of Southern California (May 16, 2007) Water Rates and Charges (listing price for treated water as $478 to $574 per acre-foot).

[51] NRDC Letter to Regional Board (March 7, 2007) at 9-10.

supports requiring onsite stormwater retention through LID practices as a feasible, cost-effective means of reducing pollutants in stormwater runoff.

C. The Regional Board's Findings Are More than Adequate to Bridge the Analytical Gap between the Evidence and the Decision

The Regional Board's decision must be accompanied by findings that would allow a reviewing court to "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 ("*Topanga*").) Great specificity is not required, and findings must be liberally construed to support rather than to defeat the decision under review. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1356; *Fair Employment Practice Com. v. State Personnel Bd.* (1981) 117 Cal.App.3d 322, 329.)

In other words, an agency decision must stand when the agency properly supported its decision with the necessary facts: "[W]here reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision[,] it has long been recognized that the decision should be upheld if the agency 'in truth found those facts which as a matter of law are essential to sustain its ... [decision].'" (*Topanga Assn. for a Scenic Community*, 214 Cal.App.3d at 1356.) Administrative findings "need not be stated with the formality required in judicial proceedings" (*Topanga*, 11 Cal.3d at 517, n.16.) Under these legal standards, the findings in the Permit easily justify the LID provisions adopted by the Regional Board.

1. The Regional Board's Findings Capably Connect the Evidence to the Decision

The findings, like the evidence in this matter, are extensive and well-documented and span thirty-five pages of the Permit. While it is impractical to explain all of the findings here, collectively they build a strong bridge between the evidence and the Board's final action, particularly regarding LID.

First, the findings demonstrate the impact that traditional development and impervious surfaces have on waterways. These impacts include significant harm where as little as 3 to 10

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percent of an area is paved or covered with impervious surface. In particular, the Regional Board found that:

> The increased volume, increased velocity, and discharge duration of storm water runoff from developed areas has the potential to accelerate downstream erosion and impair stream habitat in natural drainages. Studies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters *(Managing Runoff to Protect Natural Streams: The Latest Development on Investigation and Management of Hydromodification in California; Stein, E. et aI, December 2005; Effect of Increase in Peak Flows and Imperviousness on the Morphology of Southern California Streams; Coleman, D., April 2005).* Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 3-10 percent conversion from natural to impervious surfaces in a subwatershed. Percentage impervious cover is a one indicator and predictor of potential water quality degradation expected from new development.

(Permit, at Finding B.12.)

Second, the findings explain how traditional development alters the natural flow of water and increases pollutant loading in runoff. Specifically, the Regional Board recognized that:

> Development and urbanization increase pollutant loads, volume, and discharge velocity. First, natural vegetated pervious ground cover is converted to impervious surfaces (paved) such as highways, streets, rooftops and parking lots. Natural vegetated soil can both absorb rainwater and remove pollutants providing an effective natural purification process. In contrast, impervious surfaces (such as pavement and concrete) can neither absorb water nor remove pollutants, and thus the natural purification characteristics are lost. Second, urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants.

(Permit, at Finding B.16.)

Third, the findings reveal LID's importance in reducing the negative impacts of traditional development while also providing additional benefits. LID improves water quality and reduces runoff volume, at the same time enhancing overall quality of life and lowering costs. Notably, as found by the Board:

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> The implementation of Low Impact Development (LID) techniques across the United States and Canada has demonstrated that the proper implementation of LID techniques not only results in water quality protection benefits and in a reduction of the cost of land development and construction but also bears other positive attributes that go beyond economic benefits such as enhanced property values, improved habitat, aesthetic amenities, and improved quality of life. *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, USEPA Doc No. EPA 84I-F-07-006, December 2007. Further, properly implemented LID techniques reduce the volume of runoff leaving a newly developed or re-developed area thereby lowering the peak rate of runoff, and thus minimizing the adverse affects of hydromodification on stream habitat. *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption*, Low Impact Development Center and State of California, State Water Resources Control Board, December 2007. The requirements of this Order facilitate the implementation of LID strategies to protect water quality, reduce runoff volume, and to benefit from these additional enhancements.

(Permit, at Finding B.17.)

Fourth, the findings acknowledge the role of EIA and LID in smart growth:

> This Order promotes land development and redevelopment strategies that consider water quality and water management benefits associated with smart growth techniques. Such measures may include hydromodification mitigation requirements, minimization of effective impervious area, integrated water resources planning, and low impact development guidelines. (Reference: *Protecting Water Resources with Smart Growth,* EPA 231-R- 04-002, U.S. EPA *2004; Using Smart Growth Techniques as Storm Water Best Management Practices,* EPA 231-B-05-002, U.S. EPA 2005; *Parking Spaces/Community Places: Finding the Balance through Smart Growth Solutions,* EPA 231-K-06-001, U.S. , EPA 2006; *Protecting Water Resources with Higher-Density Development,* EPA 231-R-06-001, U.S. EPA 2006.)

(Permit, at Finding F.6.)

These findings collectively provide a clear understanding of the Regional Board's motivation and a direct link to the substantial evidentiary support in the record. Ultimately, the findings are more than sufficient to explain the Board's action and to reveal the "analytic route" that the Board "travelled from evidence to action." (*Environmental Protection & Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 517.)

2. The Alleged Inconsistency of the Findings Is Mischaracterized

The essential findings enumerated above relate to the deleterious impacts that traditional development has on waterways and to the benefits that LID offers in reducing those impacts. One

finding in the Permit, Finding B.19, discusses the technical complexities associated with LID (and infiltration, in particular) and acknowledges that at times "it is infeasible to retain the required stormwater on site due to site specific conditions." (Permit, at Finding B.19.)

While not a necessary finding to substantiate the Board's decision to require LID, Finding B.19 is consistent with the Board's inquiry over the course of the Permit's adoption, and the finding demonstrates the complexity of the issues that the Board considered with regard to LID. It also is consistent with both the draft Permit presented to the Board and with the final Permit adopted by the Board because the finding, while perhaps not fully appreciated by Petitioners, helps provide additional explanation for numerous provisions in the Permit that allow for relief from some of the substantive LID provisions challenged by Petitioners.

Specifically, Finding B.19 provides additional explanation for the built-in flexibility of the final LID provisions, particularly regarding relief from infiltration requirements. As is mentioned *supra* (section III.A.1), since its inception the Permit has contained provisions requiring onsite retention and infiltration. (*See, e.g.,* Permit, at ¶ 4.E.III.1(a); February 2009 Draft Permit, at ¶ 5.E.I.1(e) and ¶ 5.E.III.1(a)-(e); *see also* Transcript, at 175:11-16 (infiltration prioritized in both the proposed and adopted Permit).)[52] The February 2009 Draft Permit and the adopted Permit, nonetheless, provide relief in circumstances where infiltration proves infeasible. (*See, e.g.*, Permit, at 4.E.III.2 (a)-(c) (providing alternative compliance for technical infeasibility); February 2009 Draft Permit, at 5.E.IV.3; *see also* Transcript, at 185:14-18 (technical infeasibility allowances in both the proposed and adopted Permit.).[53,54]) In additional to supporting this relief from site-

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[52] Q. (Mr. David Beckman, counsel for NRDC): But your approach would allow, in fact in some cases, it would prioritize infiltration and reuse of water on site, i.e., retention; isn't that correct?
A. (Mr. Sam Unger, Regional Programs Section Chief): I believe so, yes.
Q. (Mr. Beckman): And the approach that the NGOs and others have come up with that you've characterized as a retention standard, in fact, doesn't require the retention of all rainfall on site; isn't that correct?
A. (Mr. Unger): Not of all rainfall.

[53] Q. (Mr. Beckman): Okay. But you were familiar with the fact that there [are] technical infeasibility allowances in both your proposal and ours.
A. (Mr. Unger): Yes, I am.

specific infiltration constraints, Finding B.19 helps explain the rationale for allowing capture and reuse and evapotranspiration rather than relying solely on infiltration. (*See, e.g.,* Permit, at 4.E.III.1(b).)

Petitioners attempt to make much of the inclusion of Finding B.19 in the final Permit. (Petition Brief, at 15.) Yet, for all Petitioners' complaints, Finding B.19 is a good example of what findings are supposed to do: explain the issues that have led to the Board's ultimate decision. Forthright discussion of technical complexities should be encouraged, not penalized, as Petitioners seem to wish, and these issues should be illuminated, not buried, in the record.

Finding B.19, by providing explanation for *both* the Permit's substantive requirements and the *relief* from those requirements, underscores that the Regional Board considered all issues associated with the Permit's adoption. For these reasons, the context provided in Finding B.19 is not inconsistent with anything in the other findings or with the Board's final action.

3. The Supposed "Inconsistencies" in the Permit's Findings Merely Reflect *Staff's* Opinions and Not the Ultimate Decision that the Regional Board Properly Reached [55]

The *Regional Board* is the entity charged with making a final decision regarding permit adoption, and the findings of the majority of the Regional Board members – not staff's opinion – are relevant in reviewing the Board's decision. (*See, e.g., Schneider v. Civil Service Commission of Los Angeles County* (1955) 137 Cal.App.2d 277, 282 ("The findings of a 'majority of the Commission' constitute the findings of the commission, while the dissent . . . does not").) Yet, of all of the findings in the entire Permit, only Finding B.19 contains *staff* opinion. (*See* Permit, at Finding B.19 ("Staff finds there is. . .").) To the extent that there are any inconsistencies between Finding B.19 and the Board's final action, the findings made by the *Board as a whole*, not staff's

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[54] The adopted Permit goes one step farther than the draft permit in addressing the concerns of Permit, at Finding B.19: it provides far more specificity for this relief and associated in-lieu programs. (Transcript, at 183:17-184:12). These in-lieu programs will allow community wide funding for offsite benefits like green streets. (*See* Transcript, at 348: 10-14.)

[55] As discussed above, NRDC and Heal the Bay do not believe that Finding B.19 is inconsistent with the Permit's other findings or with the Regional Board's ultimate decision.

opinions in Finding B.19, justify the Board's decision to require LID onsite retention practices with appropriate alternative compliance options.

After the equivalent of a full legal trial – with a nine-hour formal hearing, testimony from staff, Permittees, Petitioners, and NGO representatives, and formal cross-examination of witnesses – the Board was able to analyze the evidence and reach its own conclusions about the appropriate permit provisions to require the implementation of LID, as are highlighted by the many findings enumerated in subsection 1, *supra*. The Board's overwhelming decision to embrace the adopted Permit language over the draft reinforces the clear reasoning of their final decision. (*See* Transcript, at 350:25-351:6 (Board member stating that adopted language was "better than what we have now and better than the proposed tentative"); Transcript, at 361:13-365:19 (adopted language "furthers water quality, furthers the mission of the Board, and furthers the important issue that we need to all confront, which is [to] stop polluting our waters…"); Transcript 362:5-7 ("[C]omparing the tentative permit proposed by the staff and in the agreement, I felt that the agreement was better.").)

Cross-examination at the hearing provided further justification for the Regional Board not to adopt as its own finding the particular staff opinions in Finding B.19. (*See, e.g.,* Transcript, at 175:1-185:20.) During cross examination, the limitations of staff's knowledge regarding certain issues became clear. This included a general unfamiliarity with LID regulatory approaches in other jurisdictions, (Transcript, at 177: 2-15),[56] and that the previously adopted Standard Urban Stormwater Mitigation Plans addressed many of the same technical concerns that Petitioners raised

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[56] Q. (Mr. Beckman): Are you familiar with the standards for Anacostia, Washington, D.C.?
A. (Mr. Unger): No.
Q. (Mr. Beckman): Are you familiar with the standards for Philadelphia, Pennsylvania?
A. (Mr. Unger): No.
Q. (Mr. Beckman): Are you familiar with the standards for Pennsylvania as a whole?
A. (Mr. Unger): No.
Q. (Mr. Beckman): Are you familiar with the standards for New Jersey?
A. (Mr. Unger): No.
Q. (Mr. Beckman): What about Santa Fe, New Mexico?
A. (Mr. Unger): No.

in these proceedings. (Transcript, at 177: 20 – 178:20)[57] Moreover, Regional Board staff never indicated that one approach to pollution control was *worse* than the other in reducing pollutant loading; staff simply were unwilling to conclude that one was better. (*See* Permit, at Finding B.19). The Board members, as the ultimate decision-makers, were entitled to give proper weight to these opinions of staff and render their own conclusions, which they did based on the evidence and the extensive formal proceedings.

4. The Supposed "Inconsistencies" in the Permit's Findings Do Not Render the Board's Action Improper

Even if, *arguendo*, Staff's statements of opinion in B.19 were deemed inconsistent with the Board's ultimate decision, they would in no way undermine the Board's ultimate decision because Finding B.19 by itself is insufficient to demonstrate "prejudicial abuse of discretion" by the Board (*Topanga*, 11 Cal.3d at 515). Finding B.19 also does nothing to weaken the extensive findings elsewhere in the Permit and the Board's clearly stated reasoning for adopting the Permit. Contrary to Petitioners' strident claims, "[i]n making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision." (*Id.* at 514.) Any doubts that Petitioners have fabricated cannot overcome the fact that the Board's findings "show a careful

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[57] Q. (Mr. Beckman): In and around 2001, the Regional Board adopted, what we all in this world called, the SUSMP, the Standard Urban Stormwater Mitigation Plan. Are you familiar with that?
A. (Mr. Unger): Yes.
Q. (Mr. Beckman): Does that standard allow for infiltration of the design storm, the 85th percentile storm, on site?
A. (Mr. Unger): Yes.
Q. (Mr. Beckman): Were there issues raised at that time regarding vectors, potential slope instability, flooding, and ponding, and the like?
A. (Mr. Unger): I don't know if those issues were raised at that time.
Q. (Mr. Beckman): Okay. Do you know whether there have been any problems with flooding and vectors and slope instability, or has the Regional Board staff provided for technical guidance that addresses those issues?
A. (Mr. Unger): I would have to consult with other staff on that to give you a complete answer there.
Q. (Mr. Beckman): Okay. So you don't know one way or the other whether those issues have been addressed yourself.
A. (Mr. Unger): I would like to consult with my other staff, if possible.

and forthright consideration of these proposed . . . measures, and not simply a rubber-stamping blind adherence" to the proposal before it. (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors* (1998) 62 Cal.App.4th 1332 (unpublished portion in Civil C025674 at sec. 3.c.iii. (reflecting judicial philosophy on the issue).)

As explained *supra*, the findings here are clearly supported by substantial evidence in record, and, tellingly, Petitioners do not cite any legal authority to support their conclusion that inconsistent portions of a finding render an entire decision improper. Accordingly, even if portions of Finding B.19 are viewed as inconsistent with other aspects of the Permit, those portions of the finding should, at most, be stricken as harmless clerical error. (*See In re Petition of FMC Corporation*, State Board Order No. WQ 75-27, at 14-15 (correcting a corresponding clerical error resulting from "last minute change" to other permit provisions as demonstrated in transcript); *see also* Transcript, at 353:13-354:5 (discussion of option of continuance before adoption on the Permit, wherein Executive Officer indicates necessary changes could be made in ten minutes).)[58]

D. MS4 Permits Must Achieve Pollutant Reductions to the "Maximum Extent Practicable" under the Clean Water Act

Under section 402(p) of the Clean Water Act, the fundamental requirement for permits issued to owners of municipal separate storm sewer systems ("MS4s") is that they "shall require controls to reduce the discharge of pollutants to the maximum extent practicable." (33 U.S.C. § 1342(p)(3)(B)(iii).) Far from a "hortatory" directive, as Petitioners claim, the MEP standard

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[58] An important clerical error that should be additionally corrected was made during preparation of the final version of the permit. During the original motion to approve changes to the permit, staff counsel properly asked a clarifying question of the motioning board member to ensure that the motion was limited to only replacing section E.III.1 of the permit. Transcript, at 353:7-12:

Q: Senior Staff Counsel Levy: Pardon me, Chair Lutz and Board Member Marin, I think you misspoke when you said E(3) on pages 8-78, I think you mean E(3)(1).
A: Board Member Marin: E(3)(1).
A: Vice Chairperson Glickfeld: I'll second.

However, the final draft of the permit reflects a deletion of the entire remainder of that section, including the hydromodification (E.III.2) and provisions and the SUSMP provisions (E.III.3) from the revised tentative permit.

creates federally mandated minimum controls for stormwater discharges from MS4s. Permitting agencies such as the Regional Board "must, in every instance . . . ensure that each such program reduces the discharge of pollutants to the maximum extent practicable." (*Environmental Defense Center, Inc.* 344 F.3d at 856.)[59] "[T]he phrase 'to the maximum extent practicable' does not permit an agency unbridled discretion. It imposes a clear duty on the agency to fulfill the statutory command to the extent that it is feasible or possible." (*Defenders of Wildlife v. Babbitt* (D.D.C. 2001) 130 F.Supp.2d 121, 131; *Friends of Boundary Waters Wilderness v. Thomas* (8th Cir. 1995) 53 F.3d 881, 885 ("feasible" means "physically possible").)

Petitioners' claim, that the MEP standard is merely advisory and requires only that the Board "go forth, balance interests, and require some reasonable controls," (Petition Brief, at 18), is fundamentally inconsistent with well-settled law.[60] Notably, as the Court in *Environmental Defense Center* stated, permit provisions that establish "what the discharger will do to reduce discharges to the 'maximum extent practicable,' cross[] the threshold from being an item of procedural correspondence to being a substantive component of a regulatory regime." (*Environmental Defense Center, Inc.* 344 F.3d at 853 (discussing requirements for implementing minimum measures in Phase II general MS4 permits).) Through its requirement that controls must be implemented to the "maximum extent practicable," the Clean Water Act creates a federally

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[59] *See also*, *Natural Resources Defense Council v. Costle* (D.C. Cir. 1977) 568 F.2d 1369, 1379 (MS4 systems are subject to regulation by NPDES permits and must meet the requirements of the Clean Water Act).)

[60] Petitioners' interpretation of MEP here is further inconsistent with Petitioners own prior briefings acknowledging that the MEP standard sets a federal requirement. (*See* Appellants' Opening Brief in *Building Industry Association of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866 (noting that courts have stated that agencies must "ensure that each such program reduces the discharge of pollutants to the maximum extent practicable," (Appellants' Opening Brief at 35) and that "where an agency can demonstrate that compliance with water quality standards is consistent with MEP, the agency may require such compliance." (Id. at 33.); City of Arcadia et al.'s Opening Brief in *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985 (the Clean Water Act "requires cities to comply with [water quality] standards to the 'MEP' standard.") (Appellants' Opening Brief at 10.).)

mandated minimum effort, or "floor," below which a permit may not be approved by EPA or by the responsible state agency.

1. The Clean Water Act's Implementing Regulations Specifically Require the Imposition of Controls for New Development and Redevelopment

Even absent the Clean Water Act's straightforward imposition of minimum standards, the regulations that implement section 402(p) require municipalities to adopt exactly the controls challenged by Petitioners under the Permit's LID provisions. 40 C.F.R. section 122.26(d) specifically requires municipalities to implement controls to reduce polluted runoff from MS4s that "receive discharges from areas of new development and significant redevelopment," including post-construction discharges. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2).) The challenged LID provisions apply specifically to "New Development and Redevelopment Projects" under the Permit's jurisdiction. (Permit, at Section 4.E.) Thus, contrary to Petitioner's claims, the challenged provisions are mandated not only broadly by the MEP standard, but also explicitly by the federal regulations that implement the MEP requirement. The Regional Board has no discretion to avoid requiring these controls, and municipalities have no discretion to avoid implementing them.

2. LID, and Specifically the EIA Standard Adopted in the Permit, Is a Required Component of MEP to Protect Waterways

The Permit and the supporting Fact Sheet properly tie the challenged LID provisions to the MEP standard. The record contains considerable evidence of nearly identical, if not more stringent, practicable provisions that other jurisdictions have implemented throughout the U.S. (*See* Tentative Fact Sheet, at 54-55; Section III.B.1, *supra*.) In particular, regulatory bodies in California and elsewhere in the country have recognized the importance of, and successfully implemented, requirements to retain a specified volume of stormwater onsite because such requirements prevent *all* pollution in that volume of rainfall from being discharged to receiving waters. The widespread implementation of such onsite retention standards demonstrates the practicability of onsite retention as a practice for reducing the discharge of pollutants in stormwater. Similarly, evidence in the record amply demonstrates that an onsite retention standard

based on the effective impervious area of a site would be a technologically feasible approach in Ventura County and would reduce stormwater discharges and pollution far better than practices that allow for the discharge of the design storm volume. *(See* Permit, at Finding E.27 (finding that "all requirements in this order are Practicable. Moreover, while commenters have alleged that the Permit requirements are beyond 'MEP,' no commenter has presented evidence that demonstrates that any particular Permit requirement is not actually practicable.").) Specifically, Petitioners have not offered concrete evidence that a single site in Ventura County could not meet the otherwise applicable 5% EIA standard or even the 3% EIA standard supported by the record. Petitioners offer no justification, either legal or factual, for their challenge to the Permit's LID requirements.

3. EPA Endorsed the Adopted Language

EPA has long interpreted the MEP standard as a continually evolving floor for performance, which requires "expanded or better-tailored BMPs" over time. (61 Fed. Reg. 43,761.) This interpretation is borne out by EPA comments and testimony on this and other permits in California. Notably, EPA has called upon Regional Boards across California to prioritize the implementation of LID, recently threatening to "consider objecting to the [San Francisco Bay region's] permit" if it does not include "additional, prescriptive requirements" for LID.[61]

Along with the prioritization of LID implementation, EPA stated that its "primary objective for incorporating LID into renewed MS4 permits, especially for those that represent the third or fourth generation of permits regulating these discharges, is that the permit must include clear, measurable, enforceable provisions for implementation of LID."[62] EPA noted specifically that "LID requirements . . . should be revised to clarify that regulated projects must utilize LID design elements to ensure onsite management of stormwater."[63] Petitioner's challenge to the LID

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[61] Letter from Douglas E. Eberhardt, EPA, to Dale Bowyer, San Francisco Bay Regional Water Quality Control Board (April 3, 2009) at 1.

[62] *Id.* at 1-2.

[63] *Id.* at 2.

provisions runs directly counter to the requirements that EPA has stated are mandated by federal law.

This is particularly relevant given that, as mentioned previously, EPA commented approvingly on the Ventura Permit, at the May 7 hearing. Stating that EPA had determined that "it's really important for improvements to be made to include clear and quantifiable performance criteria," (Transcript, at 118: 6-8), EPA endorsed the *specific* language ultimately inserted into the Permit: "with those changes made . . . the permit would deserve to be adopted." (Transcript, at 121: 7-10; *see generally* Transcript, at 120:21 – 121:10.) Given EPA's approval of the adopted provisions and EPA's express statements that, in order for a permit to be approved, it must include quantifiable limits such as those in the Permit, Petitioners in effect now ask the State Board to weaken the Permit such that it would no longer meet EPA approval, as required under the Clean Water Act. (40 C.F.R. § 123.29; 33 U.S.C. §§ 1342(b)(4), (d).)

E. The Mandates of Federal and State Law Make Water Code § 13241 Inapplicable

Petitioners' claims regarding the application of section 13241 reduce to an issue that has been litigated and resolved against Petitioners by California courts. Petitioners now seek, in raising the same, stale claim, to portray their argument as one of statutory interpretation. Relying on their erroneous interpretation of "maximum extent practicable," Petitioners claim "there is no conflict – of the type giving rise to federal preemption concerns – between 33 U.S.C. section [1342](p)(3)(B)(iii) . . . and [the application of] Calif. Water Code section 13241. . . ." (Petition Brief, at 19.) As demonstrated above, however, the Clean Water Act's MEP standard creates a federal floor for controls in municipal stormwater permits. This federal requirement cannot be in any way lessened by the application of state law. Thus, section 13241 is only relevant when the requirements of federal law are exceeded. As the California Supreme Court held in *City of Burbank v. State Water Resources Control Board*, Regional Boards are forbidden from considering state law factors, such as those under section 13241, "if so doing would result in the dilution of the requirements set by Congress in the Clean Water Act." ((2005) 35 Cal.4th 613, 626 ("*Burbank*").) Here, the ruling of the California Supreme Court dictates that section 13241 does not apply when the Regional Board is implementing a basic Clean Water Act requirement, as it is here.

1. Petitioners' Claims Should Be Barred under Principles of Collateral Estoppel

"Under California law, a party is collaterally estopped from relitigating an issue if: '(1) the issue decided in a prior adjudication is identical with that presented in the action in question; *and* (2) there was a final judgment on the merits; *and* (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication.'[citation]." (*Burdette v. Carrier Corp.* (2008) 158 Cal.App.4th 1668, 1688.) Here, Petitioners' claim described above – namely, that the Regional Board failed to adequately consider the factors enumerated under section 13241 because the MEP standard does not obligate the Regional Board to adopt any federally mandated requirements – should be barred at the outset by collateral estoppel because the identical issue was litigated and decided, by the same parties, in *County of Los Angeles v. State Water Resources Control Bd.* ((2006) 143 Cal.App.4th 985.)[64] In that case, the Court held meritless Petitioners' claims that the Los Angeles MS4 permit "imposes conditions more stringent than required by the federal Clean Water Act" and that the Regional Board therefore "failed to consider the economic impact of issuance of the permits." (*Id.* at unpublished portion, section G.3.) These claims raised identical issues to those raised here; a final judgment on the merits was issued by the court; and the parties (the Building Industry Legal Defense Fund, the Construction Industry Coalition on Water Quality, and the Regional Board), were the same. Therefore, Petitioners' claims are precluded.

2. State Law Compels Compliance with the Federal Clean Water Act

The California Supreme Court in *Burbank* faced essentially the same question as this Board: must the Regional Board comply with section 13241 of the Porter-Cologne Act when adopting NPDES permit conditions? The Court did not hold, as Petitioners argue, that section 13241 applies unless the Regional Board proves that it is preempted by federal law. Rather, the Court remanded the case to the trial court to determine whether the permit in question imposed standards more stringent than federal law – a necessary predicate to deciding whether section 13241 applies in the first place. (*Burbank*, 35 Cal.4th at 627.) Because the LID provisions at issue are a requirement of federal law, state law must defer to their implementation, and there is no

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[64] *See* 143 Cal.App.4th 985, 989, identifying "the Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality" as Plaintiffs.

requirement that the Regional Board consider the factors identified in section 13241 prior to the Permit's adoption.

In further discussing the interplay between 33 U.S.C. § 1342(p)(3)(B)(iii) and Water Code § 13241, Petitioners claim that if a conflict exists, the burden of demonstrating preemption falls, in this case, on the Regional Board. Petitioners fail to recognize, however, that *state law* – not federal preemption – determines whether section 13241 and related state law factors actually apply. To ensure consistency between the state and federal schemes, the Legislature enacted Chapter 5.5 of the Porter-Cologne Act in 1972, subordinating Porter-Cologne's provisions to those of the Clean Water Act. Water Code section 13372(a) thus provides that, "This chapter [entitled 'Compliance with the Provisions of the Federal Water Pollution Control Act as Amended in 1972'] shall be construed to ensure consistency with the requirements for state programs implementing the Federal Water Pollution Control Act. . . . The provisions of this chapter shall prevail over other provisions of this division [which includes section 13241] to the extent of any inconsistency." (Wat. Code § 13372(a).) Section 13372 therefore acts as a limitation upon the applicability of other sections of the Porter-Cologne Act, ensuring that the State will not enforce water quality laws that would weaken practices required under the Clean Water Act. (*See City of Burbank*, 35 Cal.4th at 620.)

In relation to section 13241, section 13372 precludes any wholesale conclusion that the state law provisions apply in all instances. Indeed, it is state law itself, and not federal law, that requires state law to cede to the mandates of the federal Clean Water Act. As the California Supreme Court recognized in *Burbank*: "Our construction of sections 13263 and 13241 does not end with their plain statutory language, however. We must also analyze them in the context of the statutory scheme of which they are a part. Like sections 13263 and 13241, section 13377 is part of the Porter-Cologne Act. . . . Section 13377 specifies that wastewater discharge permits issued by California's regional boards must meet the federal standards set by federal law." (*City of Burbank*, 35 Cal.4th at 625 (internal citations omitted); *see also Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 ("[T]he various parts of a statutory enactment must be harmonized by

considering the particular clause or section in the context of the statutory framework as a whole.").)

Accordingly, Petitioners here needed to prove that section 13241 factors actually apply, given the Porter-Cologne Act in its entirety, by demonstrating that the challenged Permit provisions are more stringent than required by the Clean Water Act. (*See id.* at 627.) Petitioners have failed to meet their burden purely as a matter of state law, so principles of federal preemption never come into play.[65]

3. Even if the Permit Exceeds MEP and Other Federal Mandates, the Regional Board Did Consider Factors under 13241

Petitioner's claim that the Regional Board failed to properly consider section 13241 factors would still be without merit even if the Permit's onsite retention standards were more stringent than required by the federal Clean Water Act and even if consideration of factors enumerated under section 13241 were required. Decrying the Permit's finding that consideration of the factors under section 13241 is not required because "the requirements [of the Permit] have been designed to be consistent with and within the federal statutory mandates described in CWA § 402(p)(3)(B)(ii) and (iii)" and " all requirements in this order are practicable," (Permit, at Findings E. 26-27), Petitioners claim broadly that "[t]he Ventura Permit . . . reflects the Regional Board's continued refusal to consider the Section 13241 factors." (Petition Brief, at 17.) Petitioners have ignored an avalanche of evidence to the contrary, however, including the Permit's related finding that "[t]he Regional Board has considered all of the evidence that has been presented regarding the 13241 factors in adopting this permit." (Permit, at Finding E.28.)

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[65] By contrast, preemption occurs when, for example, a federal law supercedes or supplants any inconsistent state law or regulation, the opposite of the situation here. (*See* Black's Law Dictionary (8th ed. 2004).) Federal preemption may be found where a plaintiff asserts a right based on state law, but an applicable federal law has occupied the entire regulatory field. (*See, e.g., U.S. v. Manning* (9th Cir. 2008) 527 F.3d 828, 839 (Washington's Cleanup Priority Act preempted by federal Atomic Energy Act ("AEA") because the AEA retained essentially exclusive authority over federal management of nuclear waste.).) Notably, even if the State Board were to find a federal preemption issue existed, the outcome of any preemption-based inquiry would be the same; state law cannot be enforced in such way that it weakens permit provisions that are required under the federal Clean Water Act. (*Burbank*, 35 Cal.4th at 620.)

Petitioners attack, in particular, the Regional Board's reliance on a study entitled "Economic Considerations of the Proposed Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from the [MS4s] within . . . Ventura County . . . June 2, 2008." (Permit, at Finding E.28.) This type of analysis, though, has been approved by California courts, which have held that section 13241 "does not define 'economic considerations' or specify a particular manner of compliance, and thus . . . the matter is within a regional board's discretion." (*City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1415.) Notably, the court in *Arcadia* found "no authority for the proposition that a consideration of economic factors under Water Code section 13241 must include an analysis of every conceivable compliance method or combinations thereof or the fiscal impacts on permittees." (*Id.* at 1417.) Given such legal precedents, consideration of the above report, on its own, represents compliance with the economic considerations requirement of section 13241.

Additional evidence in the record belies Petitioners' claims regarding the Regional Board's alleged failure to consider economic and other factors under section 13241. For example, the Tentative Fact Sheet discusses a document published by EPA and entitled "Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices," which details a series of seventeen case studies "in the vast majority of [which], significant savings were realized due to reduced costs for site grading and preparation, stormwater infrastructure, site paving, and landscaping." (Tentative Fact Sheet, at 53.) The Regional Board also had in its possession two additional documents, both contained in the record,[66] that further detail the economic benefits of LID, as well as a thorough discussion of the economic value of water retained onsite through LID practices. (*See* Section III.B.3, *supra* ; *City of Santa Cruz v. Local Agency Formation Comm'n.* (1978) 76 Cal.App.3d 381, 393-394 (courts presume agency considered the documents before it.).)

With regard to the reasonableness of conditions imposed by the LID provisions of the Permit, the Fact Sheet cites no fewer than eight studies and publications that describe the implementation and benefits of LID practices, including studies of "Effective Impervious Area

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[66] EPA Cost Study; ECONorthwest Study.

Principles" directly relevant to the adopted standard. (Tentative Fact Sheet, at 49-54.) The record includes regionally specific studies that explain both the applicability and pollutant reduction benefits of onsite retention practices similar to those contained in the Permit.[67] The Fact Sheet also comprehensively discusses onsite retention standards (more stringent than those contained in the Permit) for five additional jurisdictions nationwide. (*See* Tentative Fact Sheet, at 54-55; our discussion, *supra* Section III.B.1.) In light of this overwhelming factual evidence, the contention that the Regional Board failed to properly consider the section 13241 factors is unconvincing.

Petitioners additionally claim that any consideration of section 13241 undertaken by the Board is immaterial because "the substantive provisions of the permit changed radically ***on the day of its hearing*** . . . [and] the economic ramifications of arresting the natural flow of storm water – rather than maintaining it – are tremendous." (Petition Brief, at 17.) In so arguing, Petitioners fundamentally misconstrue the provisions of, and revisions to, the Permit. The provisions ultimately adopted represent a logical outgrowth of the proposed requirements and, as previously discussed, reflect years' discussion of the standards at issue. Petitioners are correct in one regard, though: the overall economic ramifications of implementing the Permit's LID provisions are tremendous – in terms of the savings that accrue from reducing the flow of stormwater to the MS4 through onsite retention, thereby reducing the strain on and costs of infrastructure.[68]

F. The Regional Board Acted Well Within its NPDES Authority, and Petitioners' Claim to the Contrary Must Fail

1. Petitioners Failed to Exhaust Administrative Remedies on this Claim

"The exhaustion of an administrative remedy has been held *jurisdictional* in California,"[69] and petitions to the State Board following Regional Board actions "shall be limited to those substantive issues or objections that were raised before the regional board." (23 C.C.R. § 2050(c).)

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[67] Horner Study; Horner April 10 Letter.

[68] *See generally,* EPA Cost Study; ECONorthwest Study.

[69] 3 Witkin California Procedure (4th Ed. 1996) § 307; *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1151.

Despite this well-settled requirement – and the three-and-one-half year-long period during which the Regional Board was actively considering the Ventura Permit – Petitioners now raise for the first time arguments that the Permit "unlawfully regulates matters that are not properly subject to the NPDES program." (Petition Brief, at 8.) Petitioners failed to raise this issue at the May 2009 Regional Board hearing or in their numerous comment letters.[70] On this basis alone, the State Board should summarily dismiss all arguments now advanced by Petitioners that were not placed squarely before the Regional Board through the aforementioned testimony, comments, or in another competent manner. (*See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380 ("lack of comment, like Sherlock Holmes's 'dog in the night-time' which tellingly failed to bark [citation] was in itself evidence"); *see also Abelleira v. Dist. Ct. of App.* (1941) 17 Cal.2d 280, 291-293; *People v. Craycroft* (1852) 2 Cal. 243, 244 ("Where a right is given, and a remedy provided by statute, the remedy so provided must be pursued.").)

As stated previously, Petitioners had numerous opportunities to comment and to object to the Permit on the grounds now raised; Petitioners, however, did not once make such comments or objections at any hearing or in any comment letter. If the State Board denies this portion of the Petition, it would promote the longstanding policy of discouraging petitioners from withholding, until the last minute, objections that could have been raised in the early administrative stages, a policy that renders appeals to the State Board unnecessary. (*See Petition of the Dep't of Fish and Game for Review of Order No. 74-12 (NPDES No. CA0047953) of the California Regional Water Quality Control Bd., Central Coast Region,* State Board Order No. WQ 75-11, at 6 (criticizing the petitioner for submitting late comments because if timely comments had been submitted, the petition for review would not have been necessary).) Furthermore, if the Regional Board is presented with all of the evidence and arguments, it can undertake a more complete and thorough analysis of outstanding issues and thus adopt a better Permit. Allowing a party to withhold its arguments until after the Permit is adopted prevents the State Board from knowing how the Regional Board would have considered that argument, and Petitioners' conduct unnecessarily

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[70] Letters from BIA and CICWQ to Regional Board on March 7, 2007, October 15, 2007, May 29, 2008, April 10, 2009.

extends the administrative process and prejudices all involved. The State Board should dismiss this claim.

2. Petitioners' Claim Must Fail on the Merits

Notwithstanding the exhaustion issue, Petitioners' claim that the Regional Board acted beyond its NPDES authority must fail for several substantive reasons. First, rather than providing concrete evidence of their concerns, Petitioners provide merely speculation about activities that might be impacted by the Board's action. (Petition Brief, at 9.) Petitioners do not cite a single fact in the record or any legal authority other than Clean Water Act § 402(p) itself for their claim. Such rhetorical conjecture is inadequate on its own (*see Degrassi v. Cook* (2002) 29 Cal.4th 333, 340 ("None of this rhetoric substitutes for evidence")) and is wholly insufficient to overcome the pervasive and convincing evidence of development's impacts on water quality and the benefits of the approach taken by the Regional Board to protect our waterways.

Second, Petitioners confuse the trigger requiring a permit under the Clean Water Act – discharge from an MS4 – with the requirements that follow a permit's issuance. (*Compare* 40 C.F.R. § 122.26(b)(4)(iii) *with id.* at § 122.26(d)(2)(iv).) The trigger for a permit is limited to discharges "from" the MS4. Petitioners' citation to the Clean Water Act proves this point because they discuss requiring a permit for discharges "from" an MS4. (Petition Brief, at 10 (citing 33 U.S.C. § 1342(p)(3)(b).) Here, no permittee claims to have wrongfully received a permit from the Regional Board, and there is no dispute that the Permit in this matter was issued for discharges from the Ventura MS4.

Third, Petitioners misunderstand that once a permit is issued, the Permittees must implement a host of controls and programs that will, among other things, regulate the discharge of pollutants into their MS4. In this regard, the Regional Board has not only the authority – but the obligation – to "require controls to reduce the discharge of pollutants...." (33 U.S.C. § 1342(p)(3)(B)(iii).) When Congress adopted section 402(p)(3)(B), it expressly required EPA and State delegates to exercise that authority, as Congress did elsewhere in the Act. (*See, e.g.,* 33 U.S.C. 1311(e).) Petitioners, instead, present a skewed version of the law by disregarding the full suite of controls and programs under the Permit and instead raise the hypothetical objection that

there might be some construction sites in Ventura that may not discharge. Petitioners' reading of federal law would limit permit programs to only those that address pollutants after they have already entered the MS4. Neither the Clean Water Act nor its implementing regulations place such a limit on the *contents* of permits and their programs. Instead, the CWA requires the permitting agency to "require controls to reduce the discharge of pollutants," including, *inter alia*, management practices and control techniques to prevent pollution at the source. (33 U.S.C. § 1342(p)(3)(B)(iii).) "Federal law requires that permits include controls to reduce pollutant discharge in areas of new development and significant redevelopment – the very area where regional board review occurs." (*County of Los Angeles*, 143 Cal.App.4th at 1003.)

Fourth, Petitioners also misapprehend the purpose of this Permit and the fundamental principals of pollution prevention. Permits of this nature require measures designed to prevent pollution at the source, *i.e.* to help reduce discharges "to" and "in" the storm drain. Limiting permit conditions to controlling only pollutants discharged "from" the storm drain, as Petitioners' propose, would be contrary to law, as well as a limitation on the Permittees' ability to choose prevention and other measures over more costly clean-up. On a common-sense level, controlling pollution at the source before it reaches the MS4 allows for less expensive controls – like public education, street cleaning, and screens – at the beginning of the system and avoids the difficulties of mitigating massive quantities of pollutants once they are in the system. This approach to pollution control also follows the structure of the Clean Water Act and legislative history on municipal stormwater permits: "These are actual programs. These are permits that go far beyond the normal permits we would issue for an industry."[71] Further, the Clean Water Act favors this approach for other dischargers, such as sanitation treatment plants. (40 C.F.R. §§ 403.5(b); 122.21(j)-(k).) Therefore, Petitioners' claims fail on this issue.

G. The Permit Does Not Infringe on Local Land Use Decision-Making Authority

There can be no infringement on land use authority in this circumstance because environmental regulations simply are not land use regulations. In *California Coastal Comm'n v.*

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[71] Remarks of Sen. Stafford, 132 Cong.Rec. S32381 (Oct. 16, 1986).

Granite Rock Co., the United States Supreme Court explained, "Congress has indicated its understanding of land use planning and environmental regulation as distinct activities." ((1987) 480 U.S. 572, 587.) Basically, land use planning focuses on designating particular uses for the land, while environmental regulation requires only that environmental damage be kept within prescribed limits, regardless of the land use on a particular parcel. (*Id.*) Accordingly, the Regional Board's implementation of environmental regulations does not infringe upon the municipalities' land use authority, as they occupy separate spheres of regulatory power. Even if this were not the case, local land use authority must be exercised consistent with statewide policy. (Govt. Code § 65030.1.)

H. Petitioners' CEQA Arguments Must Fail

CEQA does not apply to the issuance of NPDES permits. (*County of Los Angeles* 143 Cal.App.4th at 1005-07.) Moreover, Petitioners Building Industry Legal Defense Fund and the Construction Industry Coalition on Water Quality were parties to the above California Supreme Court litigation, (*see id.* at 989), where this issue was decided in favor of the Regional Board. Their arguments, therefore, like their arguments regarding the application of Water Code § 13241, are barred under the related doctrines of res judicata and collateral estoppel, as they raise identical issues here. (*See, e.g.*, section III.E.1, *supra*.) For this reason, Petitioners cannot contend that the Regional Board's actions violated CEQA. Rather, Petitioners urge the Regional Board to "seek ways to harmonize" the Permit with CEQA. (Petition Brief, at 14.) Petitioners also express concern that, under hypothetical circumstances, they will be precluded by the Permit's LID provisions from undertaking appropriate actions to protect the environment during future project-specific CEQA review.

Contrary to Petitioners' assertions, CEQA explicitly allows the Regional Board (or for that matter, any state environmental agency) to carry out its substantive mandate: "No provision of [CEQA] is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer." (Pub. Res. Code § 21174.) Hence, Petitioners argument that CEQA somehow limits the authority of state agencies to implement substantive pollution control statutes

does not merit review. Moreover, the Regional Board's action in no way limits *additional* environmental protection under project-specific CEQA review should further environmental protections be necessary to reduce the impacts of development. Quite simply, the LID provisions do nothing to relieve Petitioners of their "independent obligation under CEQA to protect the physical environment from the effects of their project[s]." (*City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 362 (rejecting legal infeasibility on all counts).)

I. The "Natural Flow Doctrine"[72] Highlights the Problems of Traditional Development and Buttresses the Need for the Regional Board's Action

The adopted Permit is consistent with principles that attempt to restore the flow of water to its natural state. (*See, e.g.,* Permit, at Finding B.17.) Unfortunately, by its very nature, traditional land development alters the natural flow of water, and longstanding case law supports the general legal tenet that with regard to allowing drainage from a property, "each property owner's duty is to leave the natural flow of water[73] undisturbed." (Petition Brief, at 10, citing *Gdowsky v. Louie* (2000) 84 Cal.App.4th 1395 and *Keys v. Romley*, (1966) 64 Cal.2d 396.) This principle is sometimes referred to as the Natural Flow Doctrine.

The seminal California Supreme Court case discussing the Natural Flow Doctrine, *Keys v. Romley*, highlights both the negative role that development plays in altering water flow and the need to prevent its harmful impacts. *Keys* involved a lawsuit between neighboring property

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[72] Petitioners' discussion of Natural Flow Doctrine, Natural Flow Rule and Natural Flow Theory refer inconsistently to distinct legal principles: one involving the tortious drainage of water across property lines (*see Keys*, 64 Cal.2d at 407-408) and the other involving riparian water rights and appropriation of natural waterways (*see, e.g., Franco-American Charolaise, Ltd. v. Oklahoma Water Res. Bd.* (Okla. 1990) 855 P.2d 568, 573-74 ("Under the natural flow doctrine, the riparian owner is entitled to have the water of the stream flow in its natural channel without diminution or alteration"); *see generally, United States v. Gerlach Live Stock Co.* (1950) 339 U.S. 725).) For purposes of this brief, the drainage issues as advanced in the cases cited by Petitioners shall be discussed.

[73] "Water diffused over the surface of land, or contained in depressions therein, and resulting from rain, snow, or which rises to the surface in springs, is known as 'surface water.' It is thus distinguishable from water flowing in a fixed channel, so as to constitute a watercourse, or water collected in an identifiable body, such as a river or lake." (*Keys*, 64 Cal.2d at 400.)

owners that arose when "frequent heavy and damaging rainwater flowed from the [neighboring] property to the [plaintiff's] property as a result of . . . construction. . ." but flooding on the plaintiff's property "did not occur prior to the construction of the building and grading and paving on the [neighboring] property." (*Keys*, 64 Cal.2d at 400.) Because of such problems associated with development, the court in *Keys* noted that "[t]he civil law rule [of the natural flow doctrine], if strictly applied, admittedly has some tendency to inhibit improvement of land, since almost *any use of the property is likely to cause a change in the natural drainage* which may justify complaint by an adjoining landowner." (*Id.* at 402 (emphasis added).)[74] The Court then proceeded to articulate the modern day "reasonableness rule" to help guide lower courts in navigating the rigidity of the civil law rule. In this reasonableness test, "[i]t is . . . incumbent upon every person to take reasonable care in using his property to avoid injury to adjacent property through the flow of surface waters . . . It is equally the duty of any person threatened with injury to his property by the flow of surface waters to take reasonable precautions to avoid or reduce any actual or potential injury." (*Id.* at 409.)

While the cases cited by Petitioners regarding the evolution of the natural flow doctrine clearly involve *tort law* "governing liability for property damage caused by surface water," (*Gdowsky*, 84 Cal.App.4th at 1402; *see* also *Keys*, 64 Cal.2d at 407-408.),[75] the ultimate irony of the rule (as asserted by Petitioners against the Regional Board) is that many developers historically have violated the principle *aqua currit et debet currere ut currere solebat.*[76] Indeed, the myriad problems associated with runoff from land alteration are the very basis for the rule, be it the civil law rule or the reasonableness rule.

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[74] Nonetheless, the court went on to observe that "California's phenomenal growth rate, to which no one can be oblivious and of which this court may take judicial notice, appears unstunted by the existence and application of the civil law rule since 1873." (*Keys*, 64 Cal.2d at 407.)

[75] Given the nature of this doctrine as it relates to tort law, Petitioners' arguments appear to be merely an academic exercise, whereby even if Petitioners were correct, tort law does not provide a cognizable claim for relief before the State Board.

[76] "Water runs and ought to run as it is accustomed to run." (*Keys*, 64 Cal.2d at 396, n.6.)

As stated above, traditional development has had enormous negative impacts on water's natural flow – from inflicting fundamental changes in hydrology to serving as a leading source of pollution. (*See* Permit, at Findings 12, 16.)[77] On the other hand, as the Regional Board properly recognizes, LID is a necessary, reasonable, and effective means of restoring a more natural water regime and addressing the many problems associated with traditional development while still allowing responsible development to take place. (*See* Permit, at Finding B.17 ("[P]roperly implemented LID techniques reduce the volume of runoff leaving a newly developed or re-developed area thereby lowering the peak rate of runoff, and thus minimizing the adverse affects of hydromodification . . .").) Because of these well-known benefits of LID, the National Academy of Sciences recently issued a comprehensive report with the following recommendation for stormwater management programs: "Municipal permittees would be required under general state regulations to make [LID] techniques top priorities for implementation in approving new developments and redevelopments, to be used unless they are formally and convincingly demonstrated to be infeasible."[78] Further, in December 2007, the State Water Resources Control Board commissioned a report which found that "[t]he important concept across all of [the] approaches [described in the report] is that the regulations established a *performance requirement* to limit the volume of stormwater discharges."[79] Another study, completed for the Ocean Protection Council, recommends the following standard: "Regulated development projects shall reduce the percentage of effective impervious area to less than five percent of total project area by draining stormwater into landscaped, pervious areas."[80] None of these studies suggests that LID

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[77] EPA Cost Study, at v.

[78] National Academy of Sciences, Committee on Reducing Stormwater Discharge Contributions to Water Pollution, National Research Council (2008) Urban Stormwater Management in the United States, at 500.

[79] State Water Resources Control Board (December 2007) A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption, at 23 (emphasis added) ("SWRCB LID Report").

[80] Ocean Protection Council of California (January 2008) State and Local Policies Encouraging or Requiring Low Impact Development in California, at 27.

by itself will eliminate all of the negative impacts that development wreaks on natural water flow, and, again, the Regional Board could have – and should have – gone further to protect waterways from development. Nonetheless, the latest Permit adopted by the Regional Board is not only reasonable, it is the best effort to date in Ventura County that attempts to restore the natural regime currently upset by traditional development, and it helps ensure that future development will not violate the Natural Flow Doctrine and its progeny.[81]

J. Petitioners' Request for a Hearing Should be Denied

Petitioners request a hearing before the State Board. (Petition, at 8.) However, State Board regulations establish clear conditions that must be satisfied in order for a hearing to be granted, and Petitioners have not satisfied those conditions here. The regulations state:

> The petitioner may request that the state board conduct a hearing to consider testimony, other evidence, and argument. Such request *shall be supported by a summary of contentions to be addressed or evidence to be introduced and a showing of why the contentions or evidence have not been previously or adequately presented.*

(23 Cal. Code Regs. § 2050.6(b) (emphasis added).)

Petitioners claim to request a hearing so that "evidence can be marshaled and presented" to the State Board (Petition, at 8), yet they provide neither sufficient explanation of the reason for which such evidence was not already presented to the Regional Board, nor a "summary of contentions to be addressed or evidence to be introduced." Moreover, Petitioners already sent their experts, Mr. Eric Strecker and Dr. Mark Grey, to testify at the May 7, 2009 hearing. Petitioners not only had every opportunity to present all relevant information, but they took full advantage of the most recent opportunity in their half hour-long presentation. (Transcript, at 253:3-284:25.) Consequently, by the plain language of the applicable regulations, this request must be denied.

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[81] In their brief at page 11, Petitioners once again grossly misrepresent the Regional Board's action by alleging the Permit contains a complete prohibition on surface water discharge. The adopted LID provisions not only do *not* prohibit all discharges (*see* supra at I.A), but also allow surface discharge from impervious surfaces at levels that could be harmful (*See* Horner Report, recommending 3% EIA rather than 5% EIA).

Petitioners' only explanation seems to be their wishful thinking that the Regional Board would rubber-stamp the draft of the Permit as presented by staff. As explained above, however, it is absolutely appropriate, and even routine, for the Regional Board to make changes to staff proposals at Board hearings. Indeed, that is a crucial purpose of the hearing. Furthermore, as explained *supra*, (*see* Section III.A.2), the changes adopted by the Regional Board were perfectly legitimate because they were within the scope of the suggestions and drafts (or were at least logical outgrowths thereof) that had been circulated for nearly two years prior to the hearing. Petitioners even repeatedly provided comments regarding their disagreement with onsite retention as an LID standard. (*See* Sections III.A.1-2, *supra*.) Petitioners had frequent and ample opportunity to present any additional information that they felt was relevant between 2007 and May 7, 2009. They chose not to do so.

Petitioners do not even provide any explanation of what information or evidence they wish to present, making it impossible to determine whether the information is substantively worthy of introduction. This failure also directly conflicts with the requirements of the State Board regulations. In the end, the State Board should deny Petitioners' request for a hearing and should rule directly on the merits of their petitions.

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IV. CONCLUSION

For all the foregoing reasons, the instant Petition for Review should be DENIED.

Respectfully submitted,

DATED: July 31, 2009

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: David Beckman (by NG)

David S. Beckman
Noah Garrison
Bart Lounsbury
Attorneys for NATURAL RESOURCES DEFENSE COUNCIL, INC. & HEAL THE BAY

By: [signature]

Steve Fleischli
Attorney for NATURAL RESOURCES DEFENSE COUNCIL, INC. & HEAL THE BAY

PROOF OF SERVICE

On July 31, 2009 I served the within document described as **OPPOSITION OF NRDC AND HEAL THE BAY TO PETITION FOR REVIEW** on the interested parties in said action by placing a true copy thereof in the United States mail enclosed in a sealed envelope with postage prepaid, addressed as follows:

Marleigh Wood
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Andrew R. Henderson, Esq.
BIA Legal Defense Foundation
1330 South Valley Vista Drive
Diamond Bar, CA 91765

Mr. Michael Lewis
Construction Industry Coalition
On Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, CA 91791

Ms. Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Mr. Gerhardt Hubner, Deputy Director
Ms. Norma Camacho
Ventura Countywide Stormwater Quality
Management Program
Ventura County Watershed
Protection District
800 South Victoria Ave.
Ventura, CA 93009-1600

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 31, 2009 at Santa Monica, California.

Margaret A. Oakley

DAVID S. BECKMAN, Bar No. 156170
NOAH J. GARRISON, Bar No. 252154
BART LOUNSBURY, Bar No. 253895
NATURAL RESOURCES DEFENSE COUNCIL, INC.
1314 Second Street
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Attorneys for THE NATURAL RESOURCES DEFENSE COUNCIL, INC. AND HEAL THE BAY

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(310) 779-7797

Attorney for THE NATURAL RESOURCES DEFENSE COUNCIL, INC. AND HEAL THE BAY

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002	NRDC AND HEAL THE BAY'S REQUEST FOR OFFICIAL NOTICE RE OPPOSITION TO PETITION FOR REVIEW

The Natural Resources Defense Council ("NRDC") and Heal the Bay, in conjunction with our Opposition to Petition for Review In the Matter of California Regional Water Quality Control Board, Los Angeles Region's adoption of the Ventura County Municipal Separate Stormwater National Pollutant Discharge Elimination System (NPDES) Permit; Order No. R4-2009-0057; NPDES Permit No. CAS004002, SWRCB/OCC File A-2023, hereby request that the State Water Resources Control Board ("State Board") take official notice of the following documents, pursuant to California Government Code § 11515 and California Code of Regulations § 2050.6:

A. A true and correct copy of a letter from Marleigh Wood, Senior Staff Counsel, State Water Resources Control Board, to Noah Garrison, NRDC (July 16, 2009). Evidence Code section 452(c) allows the Board to take official notice of "[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States." Courts have found that "[t]he records and files of an administrative board are properly the subject of . . . notice" under section 452(c). (*Hogen*, 147 Cal.App.3d at 125; see also *Fowler*, 42 Cal.App.4th at 1749-1750.)

B. A true and correct copy of a letter from Tracy J. Egoscue, Executive Officer, Los Angeles Regional Water Quality Control Board, to Noah Garrison (July 22, 2009). The records and files of an administrative board are properly the subject of official notice under Evidence Code section 452(c). (*Hogen*, 147 Cal.App.3d at 125; see also *Fowler*, 42 Cal.App.4th at 1749-1750.)

C. A true and correct copy of an excerpt from the Cities of Arcadia et al.'s Opening Brief in the case known on appeal as *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985. Under Evidence Code section 452(d), notice may be taken of the "[r]ecords of . . . any court of this state." Courts have found that briefs submitted in another court or litigation are proper subjects for notice. (See *Titolo v. Cano* (2007) 157 Cal.App.4th 310, 322, fn. 4; *Saben, Earlix & Associates v. Fillet* (2005) 134 Cal.App.4th 1024, 1028, fn. 1; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1254, fn. 3.)

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D. A true and correct copy of an excerpt from the Building Industry of San Diego et al.'s Opening Brief in the case known on appeal as *Building Industry Association of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866. The "[r]ecords of . . . any court of this state" are the proper subject of notice. (See *Titolo v. Cano* (2007) 157 Cal.App.4th 310, 322, fn. 4; *Saben, Earlix & Associates v. Fillet* (2005) 134 Cal.App.4th 1024, 1028, fn. 1; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1254, fn. 3.)

E. A true and correct copy of an excerpt from Order No. R8-2009-0030, NPDES Permit No. CAS618030—Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and the Incorporated Cities of Orange County within the Santa Ana Region Area wide Urban Storm Water Runoff NPDES Permit. The records and files of an administrative board are properly the subject of official notice under Evidence Code section 452(c). (*Hogen*, 147 Cal.App.3d at 125; see also *Fowler*, 42 Cal.App.4th at 1749-1750.)

F. A true and correct copy of a letter from Andrew Henderson, Building Industry Association of Southern California/Building Industry Legal Defense Foundation, to Michael Adackapara, Santa Ana Regional Water Quality Control Board (April 9, 2009). The records and files of an administrative board are properly the subject of official notice under Evidence Code section 452(c). (*Hogen*, 147 Cal.App.3d at 125; see also *Fowler*, 42 Cal.App.4th at 1749-1750.)

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For the foregoing reasons, NRDC and Heal the Bay request that the State Board take official notice of these documents.

DATED: July 31, 2009

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: David Beckman (by NG)

David S. Beckman
Noah Garrison
Bart Lounsbury
Attorneys for NATURAL RESOURCES DEFENSE COUNCIL, INC. & HEAL THE BAY

By: [signature]

Steve Fleischli
Attorney for NATURAL RESOURCES DEFENSE COUNCIL, INC. & HEAL THE BAY

PROOF OF SERVICE

On July 31, 2009 I served the within document described as **NRDC AND HEAL THE BAY'S REQUEST FOR OFFICIAL NOTICE RE OPPOSITION TO PETITION FOR REVIEW** on the interested parties in said action by placing a true copy thereof in the United States mail enclosed in a sealed envelope with postage prepaid, addressed as follows:

Marleigh Wood
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Andrew R. Henderson, Esq.
BIA Legal Defense Foundation
1330 South Valley Vista Drive
Diamond Bar, CA 91765

Mr. Michael Lewis
Construction Industry Coalition
On Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, CA 91791

Ms. Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality
Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Mr. Gerhardt Hubner, Deputy Director
Ms. Norma Camacho
Ventura Countywide Stormwater Quality
Management Program
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800 South Victoria Ave.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 31, 2009 at Santa Monica, California.

Margaret A. Oakley

Exhibit A

Linda S. Adams
Secretary for Environmental Protection

State Water Resources Control Board

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

July 16, 2009

VIA U.S MAIL & EMAIL

Mr. Noah Garrison
Natural Resources Defense Council
Los Angeles Office
1314 Second Street
Santa Monica, CA 90401
moakley@nrdc.org

Mr. Garrison,

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: DENIAL OF REQUEST FOR EXTENSION
SWRCB/OCC FILE A-2023

I have received your request for an extension of time in which to respond to the above petition. The State Water Resources Control Board Office of Chief Counsel has little flexibility in which to manage the review period set forth in Title 23, California Code of Regulations, section 2050.5. The Governor's furloughs have made it even more difficult for our office to process petitions within the regulatory deadlines. Therefore, I must deny your request.

If you should have additional questions, I may be reached at (916) 341-5169. In future correspondence, please ensure that the petitioner and Regional Board are copied.

Sincerely,

Marleigh Wood
Senior Staff Counsel

cc: See next page

Exhibit B

California Regional Water Quality Control Board

Los Angeles Region

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: http://www.waterboards.ca.gov/losangeles

Arnold Schwarzenegger
Governor

July 22, 2009

Mr. Noah Garrison
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401

RE: California Public Records Request (Tracking Number: 2009071401)

Dear Mr. Garrison:

Thank you for your request to review Regional Board records concerning the Ventura County Municipal Stormwater Permit, Waste Discharge Requirements Order No. R4-2009-0057 (NPDES No. CAS004002). The Regional Board has determined that it has documents that are disclosable. However, in that the administrative record is in the process of being complied and given the scope of NRDC's request, the documents will not be available until August 3, 2009.

To ensure that the records you wish to examine are available in the Regional Board's File Review Room and that you have sufficient desk space to review them, please call Ms. Cindy Flores at 213.576.6633 to schedule an appointment. The File Review Room is found on the second floor of the Regional Board's Office, located at 320 West Fourth Street in Los Angeles, California.

You may make a copy of any document provided by utilizing one of the self-serve photocopying machines in the File Review Room. Copies can be made at a cost of $0.15 per page. Alternatively, you can bring a photocopying machine or arrange to have a photocopying service come to the Regional Board and make the desired copies. In that the items being provided are official records, the Regional Board requests that appropriate care be taken when reviewing documents and making copies.

Should you have any questions or concerns about the Regional Board's response to your request, please contact Mr. Stephen Cain. His telephone number is: 213.576.6694; his email address is scain@waterboards.ca.gov.

Sincerely,

Samuel Unger AEO for

Tracy J. Egoscue
Executive Officer

File Search Code: WR

Exhibit C

Appeal Case No. B184034

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE CITIES OF ARCADIA, et al., Plaintiffs/Appellants, v. THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, Defendant/Respondent.	Appeal Case No. B184034

CITIES OF ARCADIA ET AL.'S OPENING BRIEF

Appeal From the Superior Court of Los Angeles County
Superior Court Case No. BS080548
Honorable Victoria G. Chaney, Judge

RUTAN & TUCKER, LLP
RICHARD MONTEVIDEO (SBN 116051)
PETER HOWELL (SBN 227636)
611 Anton Boulevard, Fourteenth Floor
Costa Mesa, California 92626-1931
Telephone: 714-641-5100

Attorneys for Plaintiffs/Appellants
THE CITIES OF ARCADIA, ET AL.

(14) Respondent issued an adjudicative decision, i.e., the subject Order, based on evidence and documents never presented at any public hearing to the Board members, and failed to follow the formal hearing requirements under State law, thus resulting in the Respondent denying Appellants a fair hearing.[4]

II. SUMMARY OF ARGUMENT

A. The Trial Court Erred In Finding Respondent Acted Within Its Authority And Not Contrary To The Federal Clean Water Act And Governing Regulations

The federal Clean Water Act (the "CWA" or the "Act") (33 U.S.C. § 1251 et seq.), adopted in 1972, regulates the quality of the "navigable waters of the United States." (33 U.S.C. §§ 1251(a), 1362(7).) To improve water quality, the Act "focuses on two possible sources of pollution: point sources and nonpoint sources." (*San Francisco BayKeeper v. Whitman* (9th Cir. 2002) 297 F.3d 877, 880.) The CWA targets point sources through technological controls that limit pollutant

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[4] As permitted by this Court's Order dated November 4, 2005, consolidating this appeal with three other related appeals, Appellants herein incorporate by this reference the arguments and points and authorities set forth in the opening briefs of Appellants the *County of Los Angeles, et al., the Cities of Monrovia, et al.*, and the *City of Industry, et al.*, except, however, Appellants herein do not incorporate those portions of such briefs asserting or in any way implying that the Respondent herein, or any "***regional***" board, has authority to issue an NPDES Permit, since, under the CWA, only a State agency with "Statewide jurisdiction over a class of activities or discharges," has the authority to issue an NPDES Permit. (40 CFR §§ 123.1(g) & 123.22(b).)

discharges to water bodies through the NPDES permit program. (*Id.*; 33 U.S.C. §§ 1311(a), 1362(12).)

Under the CWA, NPDES permits are issued either by the U.S. Environmental Protection Agency ("EPA") or, after EPA approval, by a state agency with statewide jurisdiction over a class of activities or discharges. (40 CFR §§ 123.1(g)(1) & 123.22(b) [providing that only a State agency with statewide jurisdiction has the authority to issue an NPDES permit, and if more than one State agency seeks authority to issue NPDES permits, each State agency must separate claim approval].)

Recognizing that municipal discharges differ from industrial discharges, Congress created a separate statutory scheme in 1987 to address discharges from municipal storm sewer systems ("MS4s"). The 1987 amendments to the Act expressly distinguish between industrial storm water discharges and municipal discharges. (See 33 U.S.C. §1342(p)(3)(A) & (B).)

As to industrial discharges, Congress required that such discharges strictly comply with all water quality standards, i.e., that: "Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title." (33 U.S.C. § 1342(p)(3)(A).) Section 1311 of the Act requires that dischargers comply with technological requirements, to meet "any more stringent limitations, including those necessary to meet ***water quality***

***standards . . .*"** (33 U.S.C. § 1311(b)(1)(C); *also see Defenders of Wildlife v. Browner* ("*Browner*") (9th Cir. 1999) 191 F.3d 1159, 1164-65 (emphasis added).)

Municipal storm water discharges, are regulated differently than industrial discharges. For municipal discharges, Congress provided as follows:

> "Permits for discharges **from** municipal storm sewers –
>
> (i) may be issued on a system- or jurisdiction-wide basis;
>
> (ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and
>
> (iii) shall require controls to reduce the discharge of pollutants to the **maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." (Emphasis added.)

In fact, Congress chose to treat municipal storm water discharges in a very similar manner to the way it treated discharges from nonpoint sources, i.e., both are to be governed by the "maximum extent practicable" standard. (See 33 U.S.C. § 1329(a)(1)(C).) Thus, although the CWA requires industrial discharges to strictly comply with water quality standards, the Act specifically does not require that municipalities strictly comply with such standards: "Congress expressly required industrial

storm water discharges to comply with the requirements of 33 U.S.C. section 1311 . . . . Congress chose not to include a similar provision for municipal storm sewer discharges." (*Id.* at 1165.) (*Browner*, *supra*, 191 F.3d 1159, 1165.)

Accordingly, nothing in the CWA requires that municipalities strictly comply with state water quality standards. Thus, any attempt by the State to require a municipality to strictly comply with state water quality standards is a requirement that goes beyond the mandates of federal law. (*City of Burbank v. State Water Resources Control Board ("Burbank")* (2005) 35 Cal.4th 613, 627 ["Thus, in this case, whether the Los Angeles Regional Board should have complied with sections 13263 and 13241 of California's Porter-Cologne Act by taking into account 'economic considerations,' such as the costs the permit holder will incur to comply with the numeric pollutant restrictions set out in the permits depends on whether those restrictions meet or exceed the requirements of the federal Clean Water Act."].) As the Respondent here has clearly required that the Cities strictly comply with state water quality standards, and because the CWA only requires cities to comply with such standards to the "MEP" standard, Respondent was required to comply with the State law requirements under the PCA (discussed below), including the need to comply with the "reasonableness" standard, when it adopted the subject Permit.

Exhibit D

4th CIVIL NO. D042385

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

BUILDING INDUSTRY ASSOCIATION OF SAN DIEGO COUNTY, et al.,
Petitioners, Plaintiffs, and Appellants,
vs.
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD, et al.,
Respondents and Defendants;

CITY OF CARLSBAD, et al.
Real Parties in Interest;
CALIFORNIA COASTKEEPER, et al.
Permissive Intervenors.

Appeal from the Superior Court of the
State of California for the County of San Diego
Honorable Wayne L. Peterson, Judge
San Diego County Superior Court, Case No. GIC 780263

APPELLANTS' OPENING BRIEF

LATHAM & WATKINS LLP
David L. Mulliken (Bar No. 66941)
Eric M. Katz (Bar No. 204011)
Ward J. Lott (Bar No. 211307)
701 B Street, Suite 2100
San Diego, California 92101-1234
Telephone: (619) 236-1234
Facsimile: (619) 696-7419

Attorneys for Petitioners, Plaintiffs, and Appellants Building Industry Association of San Diego County, City of San Marcos, San Diego County Fire Districts Association, Building Industry Legal Defense Foundation, Construction Industry Coalition for Water Quality, and California Business Properties Association

Basic legal analysis requires that the holding of a case be confined to the issues necessary for decision by the court.[86] The issue necessary for decision in Browner was the singular issue raised by Petitioners, as discussed supra. Since the Court held that numeric limitations were not required — the Browner Petitioners' issue — the case was effectively over. However, the Court proceeded in *dicta* to address a contention raised by the City Intervenors to the effect that not only is compliance with water quality standards not required, it is not permitted under Section 402(p)(3)(B).

Responding to that contention, the Court noted Congress reserved discretion for U.S. EPA to determine what controls in municipal stormwater permits are appropriate. "Under that discretionary provision, the EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. The EPA also has the authority to require less than strict compliance with state water-quality standards."[87]

Had an actual set of facts where an agency elected the strict compliance approach been before the Browner Court, undoubtedly the Court would have addressed the question of what considerations illuminate and inform the discretion reserved under that last modifying clause of Section 402(p)(3)(B)(iii). However, the Court did not do so, as the only question presented was the validity of the permit in the case at hand, which did not contain numeric limits. Having already disposed of that question, it

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86 Stockton Theatres, Inc. v. Palermo (1956) 47 Cal. 2d 469, 474 ("The discussion or determination of a point not necessary to the disposition of a question that is decisive of the appeal is generally regarded as *obiter dictum* and not as the law of the case.").

87 Browner, supra, 191 F.3d at 1166.

was unnecessary for the Court to address what factors would inform and limit the hypothetical exercise of the discretion that the Court recognized in the last modifying phrase of Subsection (iii).

Does U.S. EPA or the State have discretion pursuant to the last modifying phrase of this key provision to require compliance with water quality standards? The *dicta* in Browner states it does. The question is, under what circumstances? The answer consistent with Browner is clear. The last clause in the section is not a grant of discretionary authority intended to consume the basic standard of Section 402(p)(3)(B) itself. Rather, in circumstances where an agency can demonstrate that compliance with water quality standards is consistent with MEP, the agency may require such compliance. That conclusion renders the entire statutory provision consistent, giving meaning and intent to each phrase and word in the statute. It respects the contextual difference between the unvarying requirements imposed on industrial dischargers and the lesser standard of practicability applicable to municipal dischargers, which under limited circumstances, may be subject to water quality standards — to wit, where the record reflects that water quality standards can be met through practicable measures.

To read the modifying phrase as Appellees suggest eliminates the practicability standard, as the agencies could choose to require compliance with water quality standards, regardless of whether it is practicable or achievable to do so. The Browner Court recognized that reading the water-quality approach of Section 301(b)(1)(c) into the municipal stormwater permit program would render the practicability standard of Section 402(p)(3)(B)(iii) superfluous since:

> Section 1342(p)(3)(B)(iii) creates a lesser standard than § 1311. Thus, if § 1311 continues to apply to municipal storm-sewer discharges, the more stringent requirements of that section always would control.[88]

In sum, can municipal stormwater dischargers be required to attain water quality standards? Yes. But the "yes" answer is qualified. The agencies are constrained by a showing that doing so is practicable — specifically through implementation of controls that reduce pollutants to the MEP. As discussed supra, Section VII.B.2, the agency findings in the instant case are just the opposite – that meeting water quality standards is not capable of being accomplished.

(3) The Ninth Circuit recently reiterated that MEP is the standard Congress set for municipal stormwater.

The Ninth Circuit recently reviewed regulations issued by U.S. EPA – the so-called Phase II Rule – for discharges of stormwater from "small" public storm drain systems, as well as certain other kinds of discharges.[89] The Court stated in pertinent part:

> Reviewing the Phase II Rule under the first step of Chevron, . . . the plain language of § 402(p) . . . expresses unambiguously Congress's intent that EPA issue no permits to discharge from municipal storm sewers unless those permits 'require controls to reduce the discharge of pollutants to the maximum extent practicable.'[90]

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88 Id. at 1165-66.

89 Environmental Defense Ctr., Inc. v. EPA (9th Cir. Sept. 15, 2003 No. 00-70014) __ F.3d ___ [2003 D.A.R. 10479, 10485].

90 Id. at 10485.

Characterizing the agency's obligation to oversee stormwater management programs implemented by municipal permittees, the Court stated that the agency must, "ensure that each such program reduces the discharge of pollutants to the maximum extent practicable."[91]

The Ninth Circuit's review of the Phase II Rule indicates the Court's continued recognition of Congress' policy choice to extend to local government an approach based on practicability for the regulation of urban runoff.

i. MEP promotes, and is consistent with, the goals and objectives of CWA.

The objective of CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[92] To achieve this objective, CWA establishes "the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985."[93] CWA reflects various policy approaches for different types of dischargers Congress has taken as means to promote these goals. The specification of an MEP program for municipal stormwater represents one of those approaches, and certainly not the least aggressive one.

The Browner Court found persuasive that the Water Quality Act of 1987 "contains other provisions that undeniably exempt certain discharges from the permit requirement altogether (and therefore from Section 1311)."[94] The Court cited to the CWA provisions exempting from

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91 Id.

92 33 U.S.C. § 1251(a).

93 Id. § 1251(a)(1).

94 Browner, supra, 191 F.3d at 1166.

Exhibit E

State of California
California Regional Water Quality Control Board
Santa Ana Region

ORDER NO. R8-2009-0030
NPDES No. CAS618030

Waste Discharge Requirements
for
the County of Orange, Orange County Flood Control District
and
The Incorporated Cities of Orange County within the Santa Ana Region
Areawide Urban Storm Water Runoff
Orange County

FINDINGS

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board) finds that:

A. REGULATORY BASIS

1. The 1987 amendments to the Clean Water Act (CWA) added Section 402(p) (USC §1342(p)) establishing a framework for regulating municipal and industrial (including construction) storm water discharges under the National Pollutant Discharge Elimination System (NPDES) permit. Section 402(p) of the CWA requires NPDES permits for storm water discharges from municipal separate storm sewer systems[1] (storm drains or MS4s) as well as other designated storm water discharges that are considered significant contributors of pollutants to waters of the United States (waters of the US). On November 16, 1990, the United States Environmental Protection Agency (hereinafter EPA) amended its NPDES permit regulations to include permit application requirements for storm water discharges. These regulations are codified in Code of Federal Regulations, Title 40, Parts 122, 123 and 124 (40 CFR Parts 122, 123 & 124).

2. This order is based on Section 402(p) of the CWA; 40 CFR Parts 122, 123, and 124; Porter-Cologne Water Quality Control Act (Division 7 of the California Water Code or CWC, commencing with Section 13000); all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (State Board); the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan); the California Toxics Rule (CTR); and the California Toxics Rule Implementation Plan. A revised Basin Plan was adopted by the Regional Board and became effective on January 24, 1995. The Basin Plan contains water quality objectives and beneficial uses for water bodies in the Santa Ana Region. Under the CWA, the beneficial uses and the water quality objectives to protect those beneficial uses are collectively referred to as water quality standards. The Basin Plan also incorporates by reference all State Board water quality control

[1] A municipal separate storm sewer **system** (MS4) is any conveyance or a system of conveyances designed to collect and/or transport storm water, such as, storm drains, manmade channels, ditches, roads w/drainage systems, catch basins, curbs, gutters, etc., which is not part of a Publicly Owned Treatment Works (i.e., not a combined sewer).

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regional treatment control BMPs. The recommendations should include information needed to be submitted to the Regional Board for consideration of regional treatment control BMPs. At a minimum, it should include: BMP location; type and effectiveness in removing pollutants of concern; projects tributary to the regional treatment system; engineering design details; funding sources for construction, operation and maintenance; and parties responsible for monitoring effectiveness, operation and maintenance.

7. The permittees shall require non-priority development projects to document, via a WQMP or similar mechanism, site design, source control and any other BMPS which may or may not include treatment control BMPs.

C. LOW IMPACT DEVELOPMENT TO CONTROL POLLUTANTS IN URBAN RUNOFF FROM NEW DEVELOPMENT/SIGNIFICANT REDEVELOPMENT:

1. Within 12 months of adoption of this order, the permittees shall update the model WQMP to incorporate LID principles (as per Section XII.C) and to address the impact of urbanization on downstream hydrology (as per Section XII.D) and a copy of the updated model WQMP shall be submitted for review and approval by the Executive Officer[55]. As provided in Section XII.J, 90 days after approval of the revised model WQMP, priority development projects shall implement LID principles described in this section, Section XII.C. To the extent that the Executive Officer has not approved the feasibility criteria within 18 months of adoption of this order as provided in Section XII.E.1, the infeasibility of implementing LID BMPs shall be determined through project specific analyses, each of which shall be submitted to the Executive Officer, 30 days prior to permittee approval.
2. The permittees shall reflect in the WQMP and otherwise require that each priority development project infiltrate, harvest and re-use, evapotranspire, or bio-treat[56] the 85th percentile storm event ("design capture volume"), as specified in Section XII.B.4.A.1, above. Any portion of the design capture volume that is not infiltrated, harvested and re-used, evapotranspired or bio-treated[57] onsite by LID BMPs shall be treated and discharged in accordance with the requirements set forth in Section XII.C.7 and/or Section XII.E, below.

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[55] The Executive Officer shall provide members of the public with notice and at least a 30-day comment opportunity for all documents submitted in accordance with this order. If the Executive Officer, after considering timely submitted comments, concludes that the document is adequate or adequate with specified changes, the Executive Officer may approve the document or present it to the Board for its consideration at a regularly scheduled and noticed meeting. If there are significant issues that cannot be resolved by the Executive Officer, the document will be presented to the Board for its consideration at a regularly scheduled meeting.

[56] A properly engineered and maintained bio-treatment system may be considered only if infiltration, harvesting and reuse and evapotranspiration cannot be feasibly implemented at a project site (feasibility criteria will be established in the model WQMP [Section XII.C.1] and the technically-based feasibility criteria [Section XII.E.1]). Specific design, operation and maintenance criteria for bio-treatment systems shall be part of the model WQMP that will be produced by the permittees.

[57] For all references to bio-treat/bio-treatment, see footnote 56.

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3. The permittees shall incorporate LID site design principles to reduce runoff to a level consistent with the maximum extent practicable standard during each phase of priority development projects. The permittees shall require that each priority development project include site design BMPs during development of the preliminary and final WQMPs. The design goal shall be to maintain or replicate the pre-development hydrologic regime through the use of design techniques that create a functionally equivalent post-development hydrologic regime through site preservation techniques and the use of integrated and distributed micro-scale storm water infiltration, retention, detention, evapotranspiration, filtration and treatment systems as close as feasible to the source of runoff. Site design considerations shall include, but not be limited to:

   a) Limit disturbance of natural water bodies and drainage systems; conserve natural areas; preserve trees; minimize compaction of highly permeable soils; protect slopes and channels; and minimize impacts from storm water and urban runoff on the biological integrity of natural drainage systems and water bodies;

   b) Minimize changes in hydrology and pollutant loading; require incorporation of controls, including structural and non-structural BMPs, to mitigate the projected increases in pollutant loads and flows; ensure that post-development runoff durations and volumes from a site have no significant adverse impact on downstream erosion and stream habitat; minimize the quantity of storm water directed to impermeable surfaces and the MS4s; minimize paving, minimize runoff by disconnecting roof leader and other impervious areas and directing the runoff to pervious and/or landscaped areas, minimize directly connected impervious areas; design impervious areas to drain to pervious areas; consider construction of parking lots, walkways, etc., with permeable materials; minimize pipes, culverts and engineered systems for storm water conveyance thereby minimizing changes to time of concentration on site; utilize rain barrels and cisterns to collect and re-use rainwater; maximize the use of rain gardens and sidewalk storage; and maximize the percentage of permeable surfaces distributed throughout the site's landscape to allow more percolation of storm water into the ground;

   c) Preserve wetlands, riparian corridors, vegetated buffer zones and establish reasonable limits on the clearing of vegetation from the project site;

   d) Use properly designed and well maintained water quality wetlands, bio-retention areas, filter strips and bio-filtration swales; consider replacing curbs gutters and conventional storm water conveyance systems with bio-treatment systems, where such measures are likely to be effective and technically and economically feasible;

   e) Provide for appropriate permanent measures to reduce storm water pollutant loads in storm water from the development site;

   f) Establish development guidelines for areas particularly susceptible to erosion and sediment loss;

g) Implement effective education programs to educate property owners to use pollution prevention measures and to maintain on-site hydrologically functional landscape controls; and

h) During the early planning stages of a project, the LID principles shall be considered to address pollutants of concern identified in the Watershed Action Plans and TMDL Implementation Plans, and the LID BMPs shall be incorporated into the sites conceptual WQMP.

4. The selection of LID principles shall be prioritized in the following manner (from highest to the lowest priority): (1) Preventative measures (these are mostly non-structural measures, e.g., preservation of natural features to a level consistent with the maximum extent practicable standard; minimization of runoff through clustering, reducing impervious areas, etc.) and (2) Mitigation (these are structural measures, such as, infiltration, harvesting and reuse, bio-treatment, etc. The mitigation or structural site design BMPs shall also be prioritized (from highest to lowest priority): (1) Infiltration (examples include permeable pavement with infiltration beds, dry wells, infiltration trenches, surface and sub-surface infiltration basins. All infiltration activities should be coordinated with the groundwater management agencies, such as the Orange County Water District); (2) Harvesting and Re-use (e.g., cisterns and rain barrels); and (3) Bio-treatment such as bio-filtration/bio-retention.

5. Even though the LID principles are universally applicable, there could be constraining factors, such as: soil conditions, including soil compaction, saturation (e.g., hydric soils) and permeability, groundwater levels, soil and/or groundwater contaminants (Brownfield developments), space restrictions (in-fill projects, redevelopment projects, high density development, transit-oriented developments), naturally occurring contaminants (e.g., selenium in the soil and the groundwater in the Newport Bay Watershed), etc. In such cases, the LID principles could be integrated into other programs, such as: Smart Growth[58], New Urbanism[59] or regional or sub-watershed management approaches. Also see Section E, below, for alternatives and in-lieu programs.

6. The LID BMPs shall be designed to mimic pre-development site hydrology through technically and economically feasible preventive and mitigative site design techniques. LID combines hydrologically functional site design with pollution prevention methods to compensate for land development impact on hydrology and water quality.

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[58] Smart Growth refers to the use of creative strategies to develop ways that preserve natural lands and critical environmental areas, protect water and air quality, and reuse already-developed land.

[59] New Urbanism is somewhat similar to Smart Growth and is based on principles of planning and architecture that work together to create human-scale, walkable communities that preserve natural resources.

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7. If site conditions do not permit infiltration, harvesting and re-use, and/or evapotranspiration, and/or bio-treatment of the design capture volume at the project site as close to the source as possible, the alternatives discussed below should be considered and the credits and in-lieu programs discussed under Section E, below, may be considered:

   a. Implement LID principles at the project site. This is the preferred approach. For example, in a single family residential development: connect roof drains to a landscaped area, divert driveway runoff to a vegetated strip and minimize any excess runoff generated from the development. The pervious areas to which the runoff from the impervious areas are connected should have the capacity to infiltrate, harvest, evapotranspire and/or bio-treat and re-use at least the design capture volume.

   b. Implement as many LID principles as possible at the project site close to the point of storm water generation and infiltrate and/or harvest and re-use at least the design capture volume through designated infiltration/treatment areas elsewhere within the project site. For example, at a condominium development: connect the roof drains to landscaped areas, construct common parking areas with pervious asphalt with a sub-base of rocks or other materials to facilitate percolation of storm water, direct road runoff to curbless, vegetated sidewalks. The pervious areas which receive runoff from impervious areas should have the capacity to infiltrate, harvest and re-use, evapotranspire and/or bio-treat at least the design capture volume.

   c. Implement LID on a sub-regional basis. For example, at a 100 unit high density housing unit with a small strip mall and a school: connect all roof drains to vegetated areas (if there are any vegetated areas, otherwise storm water storage and reuse may be considered or else divert to the local storm water conveyance system, to be conveyed to the local treatment system), construct a storm water infiltration gallery below the school playground to infiltrate and/or harvest and re-use the design capture volume. The pervious areas to which the runoff from the impervious areas are connected should have the capacity to infiltrate, harvest and re-use, evapotranspire and/or bio-treat at least the design capture volume. (Also see discussion on hydrologic conditions of concern, below.)

   d. Implement LID on a regional basis. For example, several developments could propose a regional system to address storm water runoff from all the participating developments. The pervious areas to which the runoff from the impervious areas are connected should have the capacity to infiltrate, harvest and re-use, evapotranspire and/or bio-treat at least the design capture volume from the entire tributary area. (Also see discussion on hydrologic conditions of concern, below.)

Exhibit F

SB-AR-478

April 9, 2009

Michael Adackapara
Santa Ana Regional Water Quality Control Board
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RE: Order No. R8-2009-0030 (NPDES Permit No. CAS618030) Waste Discharge Requirements for the County of Orange, Orange County Resources and Development Management Department, and the Incorporated Cities of Orange County Within the Santa Ana Region Areawide Urban Storm Water Runoff, Orange County

Dear Mr. Adackapara:

Thank you for this opportunity to response to the draft tentative Orange County Municipal Separate Storm Sewer System Permit, Tentative Order No. R8-2009-0030 ("Draft Permit") released on March 24, 2009. The comments herein are those of (i) Building Industry Association of Southern California, Inc. ("BIA/SC"); and Building Industry Legal Defense Foundation ("BILD"), each of which represents the homebuilding industry or related construction and land development industries within the Southern California region that includes north Orange County.

BIA/SC is a nonprofit trade association representing more than 1,700 member companies, which together have more than 100,000 employees. BILD is a non-profit mutual benefit corporation and wholly-controlled affiliate of BIA/SC. BILD's purposes are to monitor legal and regulatory conditions for the construction industry in Southern California and intervene as appropriate. BILD focuses particularly on litigation and regulatory matters with a regional or statewide significance to its mission.

We remain very concerned about some key aspects the Draft Permit. Even though some objectionable aspects of the earlier drafts have been removed or corrected, we remain concerned that the tentative permit would in fact damage the land use development process and substantially harm the overall economy of north Orange County. Therefore, we must express our disappointment that the Draft Permit still fails to reflect the best policy options, despite our industry's efforts to bring science, reason and experience to help craft reasonable and practicable requirements in the new MS4 permit.

Our comments are as follows:

1. Some stakeholders have persistently distorted the meaning of the "hortatory" (i.e., merely *encouraging* or exhorting) "maximum extent practicable" language from 33 U.S.C. section 1342(p)(3)(B)(iii).

Some stakeholders, and in particular representatives of Natural Resources Defense Council, Inc. ("NRDC"), have made representations in connection with the formulation of and debate about the Draft Permit, effectively saying that the Board's rejection of particular control measures would not meet the "maximum extent practicable" mandate set forth in 33 U.S.C. section 1342(p)(3)(B)(iii). Sometimes, NRDC will point to the conclusions of an academic from one corner of the nation, or to the regulatory experiments in another part of the nation, and essentially argue that any and all measures thus indicated are proven "practicable," and therefore must be imposed by the Board here.

It is true that the federal law at issue – 33 U.S.C. section 1342(p)(3)(B)(iii) – generally directs the Board (as the U.S. E.P.A. Administrator's surrogate) to "require controls to reduce the discharge of pollutants to the maximum extent practicable...." However, this introductory "maximum extent practicable" directive is merely "hortatory" (meaning it merely *encourages* or exhorts action) rather than mandatory (indicating any legally enforceable mandate). *See Rodriguez v. West*, 189 F.3d 1351, 1355 (Fed. Cir. 1999) (holding that the express "maximum extent possible" directive of former 38 U.S.C. section 7722(d) was "hortatory rather than to impose enforceable legal obligations"). Because the language is introductory and hortatory, it does not require the Board to impose any and all possible requirements. Instead, the directive is merely a charge to go forth, balance interests, and require *some* reasonable controls.[1]

Our reading of the relevant federal statute is bolstered by the remainder of 33 U.S.C. section 1342(p)(3)(B)(iii). Immediately following the introductory "maximum extent practicable" language is this: "including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State [here, the Board] ***determines appropriate*** for the control of such pollutants." (Emphasis added.) Thus, the federal statute merely instructs the Board here, as the E.P.A.'s surrogate, to *exercise its broad discretion* (within bounds of reason – of course).

---

[1] *See Conservation Law Foundation v. Evans*, 360 F.3d 21, 28 (1st Cir. 2004):

> [The environmentalist plaintiffs] essentially call for an interpretation of the statute that equates "practicability" with "possibility," requiring [the agency] to implement virtually any measure ... so long as it is feasible. Although the distinction between the two may sometimes be fine, there is indeed a distinction. *The closer one gets to the [environmentalists'] interpretation, the less weighing and balancing is permitted.* We think by using the term "practicable" Congress intended rather to allow for the application of agency expertise and discretion in determining how best to manage ... resources.

(Emphasis added.)

The federal courts consistently have ruled that the 33 U.S.C. section 1342(p)(3)(B)(iii) directive is one mandating only the reasonable exercise of broad discretion – nothing more. *See Arkansas v. Oklahoma*, 503 U.S. 91, 105 (1992) ("Congress has vested in the [EPA or a surrogate state] broad discretion to establish conditions for NPDES permits."); *Natural Resources Defense Council, Inc. v. U.S. E.P.A.*, 96 F.2d 1292, 1308 (9th Cir. 1992) ("NRDC contends that EPA has failed to establish substantive controls for municipal storm water discharges as required by the 1987 amendments. *Because Congress gave the administrator discretion to determine what controls are necessary, NRDC's argument fails.... Congress did not mandate a minimum standards approach or specify ... minimal performance requirements.*" (emphasis added)); *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999) ("Under [the MEP standard set forth in Clear Water Act section 402(p)(3)(B)(iii)], the EPA's choice to include [or exclude] ... limitations in [NPDES] permits [for MS4s] was within its discretion."); *City of Abilene v. U.S. E.P.A*, 325 F.3d 657, (5th Cir. 2003) ("The plain language of [CWA section 402(p)] clearly confers broad discretion on the EPA [or a surrogate state agency] to impose pollution control requirements when issuing NPDES permits").

Given a proper understanding of the law, 33 U.S.C. section 1342(p)(3)(B)(iii) merely mandates that the Board here must take evidence and then exercise its *broad discretion* concerning permit conditions. Certainly, the Board and staff do not need to bow to every whim transported here from far away.

2. The Draft Permit's failure to recognize and countenance Low Impact Development *filtration* practices is seemingly a radical and unsound departure from Clean Water Act goals and established land use doctrines.

One aspect of the Draft Permit is especially radical and objectionable – at least it could possibly be read as such if not properly clarified. That is the low impact development criteria discussed in Section XII.C (5) and (7) on page 53. Particularly, these provisions can be read to indicate that the permit requirements for development or redevelopment could be met only by designing and constructing for the on-site retention – for infiltration, evapotransporation or on-site reuse – of the volume of a design storm. Notwithstanding the appendage of mitigation options where infeasibility exists, as proposed, the cited provisions would seemingly impose, for the first time, a generally-applicable requirement that ***no water (from a design storm) should leave a parcel that has been developed or redeveloped.***

This requirement seemingly flies in the face of recognized low impact development (LID) strategies, which generally aim to have LID undertaken so that the pre-construction flows of storm waters are maintained, matched, or reasonably approximated. For example, the U.S. E.P.A. last month issued its new definition of LID, which states clearly that the use of LID best management practices (BMPs) for ***filtration*** **(i.e., not merely *infiltration*)** is appropriate – and repeats the basic goal of trying to maintain pre-construction hydrology. As proposed, however, the language of the Draft Permit generally rules out the use of LID BMPs for *filtration*, and requires instead designs for the *retention* of all storm water for a design storm.

Therefore (again, unless the Draft Permit is better clarified), the draft provisions seemingly rule out the use of LID BMPs for filtration – and instead require, as a general proposition, that no storm water (except in the largest rains) can leave a developed or redeveloped parcel. If this is indeed intended, it is a radical measure that should not be undertaken. It would violate millennia (literally) of civil law concerning the unconstrained flow of rain water (called "diffuse surface water"). Specifically, the law in California – which itself is derived from the laws of the ancient Roman Empire – generally favors what is called the "***natural flow doctrine***," which states that diffuse surface flows should be permitted to flow to their natural water course. *See Gdowski v. Louie*, 84 Cal.App.4th 1395, 1402 (2000) ("California has always followed the civil law rule. That principle meant 'the owner of an upper … estate is entitled to discharge surface water from his land *as the water naturally flows*. As a corollary to this, the upper owner is liable for any damage he causes to adjacent property *in an unnatural manner*.... In essence each property owner's duty is to leave the natural flow of water undisturbed.'" – emphasis added by the court, quoting *Keys v. Romley*, 64 Cal.2d 396, 405-06 (1966)).

The "natural flow doctrine" has been altered by the California courts in recent decades – in order to facilitate reasonable land development and protect local governments and land owners. Replacing the natural flow doctrine is a ***modern reasonableness test***. Property owners (both public and private) may alter the natural flow of diffuse and/or discrete surface water, but only if they are reasonable when doing so and downstream owners can effectively trump the reasonable efforts of the upstream owner only if they (the downstream owners) in turn take reasonable defensive steps. *See, e.g., Locklin v. City of Lafayette*, 7 Cal.4th 327, 337 (1994).

Juxtaposed against both the natural flow doctrine and the modern reasonableness test is a third, less favored doctrine, called the "***common enemy doctrine***." The common enemy doctrine stands for three propositions, that (i) individual property (development) rights are paramount, (ii) in developed and developing areas, both diffuse and discrete surface water is a common scourge, and (iii) each property owner may act "for herself or himself" and take steps to alter the natural or unnatural flow of such waters for the protection of his or her property, without regard for the effect on neighbors. *See Skoumbas v. City of Orinda*, 165 Cal.App.4th 783, 792 (2008). Although the common enemy doctrine is sometimes still applied other states – particularly in urbanized and suburban areas, the common enemy doctrine has been the focus of strong criticism from progressive courts, environmentalists, academics, and concerned policy makers because of the obvious and very negative implications for the broader community and for the preservation and restoration of natural flows. *See, e.g., Keys v. Romley*, 64 Cal.2d 396, 400-03 (1966) (Mosk, J., concurring).

Of these three doctrines (the *natural flow* doctrine, the *common enemy* doctrine, and the *modern reasonableness* test), the natural flow doctrine – which seeks to *maintain the natural flows* of diffuse and discrete surface water – is the doctrine that conforms best to the federal Clean Water Act's overarching objective to "restore and *maintain*" the natural integrity of waters.[2] *See* 33 U.S.C. section 1251. Accordingly, we would, of course, expect the Board and

[2] *See* S. Rep. No. 92-414, 92 Cong. 2d Sess., 2 U.S. Code Cong. & Adm. News '72 3668,

the non-governmental organizations that purport to defend natural resources to strongly prefer the *natural flow doctrine*, and to deviate from it (if at all) only as reasonably necessary to accommodate competing societal goals.

Rather than favor the natural flow doctrine, however, the Draft Permit – with its seeming refusal to allow the *filtration* of diffuse surface water and its discharge across property lines – could be read to establish a brand new and entirely different doctrine, a "***universal retention doctrine***," standing for the strange proposition that no diffuse surface water should leave any parcel that has been developed or redeveloped, except in very large storms. (Or, alternatively, if that standard cannot be met for feasibility reasons, then the land owner must pay to mitigate off-site by applying the same new universal retention doctrine to someone else's land.)

If it were the intent of the Board's staff to propose such a universal retention doctrine, such a radical step should not be taken without much more discussion, study, and major revision. Nonetheless, we see the hint of such a doctrine both in the Draft Permit language – Section XII.C(5) and (7) are at best ambiguous in this regard – and certainly in the urgings of NRDC. We are baffled by the fact that any group such as NRDC, which purports by its very name to *defend natural resources*, would turn its back on the *natural flow doctrine*, rather than seek to maintain or approximate the natural flows or diffuse and discrete surface waters to the extent and wherever practicable. But that is what has happened here, even though the U.S. E.P.A. and others are presently urging that suburban and exurban developers should seek to maintain or approximate – to the extent practicable – natural flows. Most notably, the US EPA defines LID as follows:

> *A comprehensive stormwater management and site-design technique.* ***Within the LID framework, the goal of any construction project is to design a hydrologically functional site that mimics predevelopment conditions****. This is achieved by using design techniques that infiltrate,* ***filter****, evaporate, and store runoff close to its source.* (emphasis added)
>
> http://cfpub1.epa.gov/npdes/greeninfrastructure/information.cfm#glossary

We respectfully urge the Board and staff to reject any embrace (ambiguous or otherwise) of a new *universal retention doctrine.* We urge instead appreciation of the *natural flow doctrine* or, better yet, the *modern reasonableness test* applied with ever-evolving and progressive standards of reasonableness. We suspect that the U.S. E.P.A. would similarly urge abandonment of a universal retention proposition (assuming the E.P.A. representatives are fully aware and fathom the policy implications of the proposal). In addition, we have only barely discussed this new, general universal retention doctrine with the appropriate individuals at the California Department of Fish and Game and the U.S. Fish and Wildlife Service. We found that they were not aware of the implications of the Draft Permit. The few officials with whom we spoke

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3674 (1992) ("The Committee believes the restoration of the natural chemical, physical, and biological integrity of the Nation's waters is essential."); H.R.Rep. No. 92-911, p. 76 (1972) (""the word 'integrity' ... refers to a condition in which the natural structure and function of ecosystems is [are] maintained.").

indicated their view that any lack of attention to natural flows would raise issues about stream health, especially where water courses might be starved of storm flows in all but the larger storms. Therefore, we urge the Board's staff to thoroughly discuss the new and generally-applicable universal retention policy with your fellow agency counterparts, and then remove any preference for or generally-applicable use of the universal retention doctrine from the eventual permit revisions.

3. We continue to seek more and better integration between the MS4 permit requirements and the land planning and approval processes required by the California Environmental Quality Act (CEQA).

As our industry representatives have noted before, California law has long established CEQA as the mechanism for evaluating – and mitigating – the environmental impacts of land development. The CEQA process evaluates all environmental impacts and provides a consistent process for their mitigation, with opportunity for input from a wide cross-section of agencies and public interests. Moreover, CEQA continues to evolve as science and policy imperatives drive it to do so. For example, several years ago, green house gas emissions were never a focus of CEQA; now they certainly are.

By establishing any fixed, inflexible numeric standards for low impact development, the Draft Permit trumps all other considerations (environmental and otherwise) and improperly shifts land use approval authority to the Regional Water Quality Control Board. Although the Draft Permit may refer to waivers or exceptions for infeasibility, the Draft Permit provides no clear process for this site-specific evaluation by the co-permittees and exceptions where the permit requirements are unreasonable, infeasible or suboptimal.

CEQA could – and we maintain should – be utilized to integrate low impact development and grading considerations into the project approval process in ways heretofore not applied. This would allow for the appropriate evaluation of water quality impacts in the context of all other environmental impacts. Perhaps more significantly, it would integrate the consideration of low impact development techniques into the land use planning process at the time of project design and development – rather than the all-too-common current occurrence where these techniques are evaluated after substantial approvals are in place and changes are difficult to retro-fit. Using CEQA as the tool to accomplish the integration of low impact development techniques would be achieved if the numeric standards were established as presumptive thresholds of environmental significance, which would significantly increase the level of analysis of water quality impacts – at the time when changes are most likely to be accommodated. We offer more detailed analysis of this approach in the accompanying attachment, which is – again – the CEQA integration proposal that we have lodged before. The CEQA integration approach would achieve the Board's goals of appropriate attentiveness and reasonable consistency between jurisdictions and permits, while maintaining the ability to make local decisions appropriate for the jurisdiction's environmental circumstance.

* * * * *

Since the first draft was released, the BIA and its industry affiliates have been active participants and contributors to the creation of new and improved MS4 permit. We continue to believe that rational, *implementable* permit requirements are critical to achieving great progress concerning water quality and our environment. We hope that these comments are received in the manner in which they are intended – to continue the discussion of how we can create a workable permit that improves water quality to the maximum extent practicable. We remain committed to a positive dialog with the Board and its staff – one that will result in an informed, balanced and effective permit.

Thank you for your consideration of these comments.

Sincerely,

Andrew R. Henderson
Vice President and General Counsel,
Building Industry Association of Southern California
and General Counsel,
Building Industry Legal Defense Foundation

cc: Dr. Mark Grey

California Regional Water Quality Control Board
Los Angeles Region

Linda S. Adams
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Arnold Schwarzenegger
Governor

August 3, 2009

VIA EMAIL ONLY

Marleigh J. Wood, Esq.
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State Water Resources Control Board
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Dear Ms. Wood:

RESPONSE TO PETITION FOR REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ISSUES SET FORTH IN PETITION FOR REVIEW
SWRCB/OCC FILE A-2023

Enclosed please find the Los Angeles Regional Water Quality Control Board's response to the Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and Building Industry Association of Southern California, Inc.'s Petition for Review of Ventura County Municipal Separate Storm Sewer System Permit and Memorandum of Points and Authorities in Support of Issues Set Forth in Petition for Review of Ventura County Municipal Separate Storm Sewer System Permit. The administrative record was delivered under separate cover.

If you have any questions, please feel free to contact me.

Sincerely,

Michael J. Levy
Senior Staff Counsel

Enclosure

cc: See next page

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LOS ANGELES WATER BOARD'S RESPONSE TO PETITION FOR REVIEW OF VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

INTRODUCTORY NOTE

During the public comment period, the co-permittees and NRDC and Heal the Bay submitted for the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) consideration a variety of provisions that they had negotiated with each other for incorporation into the permit. In part, these provisions related to the Municipal Action Levels (MALs) and the permit's New Development/Redevelopment Performance Criteria. The comment letter was timely submitted, and at the Los Angeles Water Board's meeting on May 7, 2009, the Los Angeles Water Board adopted the negotiated provisions into the permit.

In this petition, the Petitioners have dubbed the negotiated provisions of the New Development/Redevelopment Performance Criteria "Permanent Retention Requirements". As detailed in our response to Contention #4, "permanent retention" of storm water is not required in the permit. Accordingly, this response refers to the provisions to which the Petitioners object as "the negotiated EIA requirements".

RESPONSE TO CONTENTION #1 – NEITHER PETITIONERS NOR THE PUBLIC AT LARGE WERE DENIED DUE PROCESS OR A FAIR OPPORTUNITY TO COMMENT ON THE NEGOTIATED EIA REQUIREMENTS

The changes made to the Ventura County MS4 draft permit at the May 7, 2009 hearing are a logical outgrowth of the proceeding, and their inclusion did not unfairly prejudice any stakeholder. The Los Angeles Water Board's decision to include the negotiated provisions in the MS4 permit was procedurally and substantively within the Los Angeles Water Board's prerogative, during the hearing, and did not require recirculation.

While neither Petitioners nor staff of the Los Angeles Water Board were parties to the negotiations between the environmental organizations and representatives of the co-permittees, like staff, Petitioners' representatives were aware that those negotiations had been ongoing since at least as far back as December 2008. Like staff, Petitioners also received copies of the comment letters containing the proposals on the date they were submitted (April 10, 2009), and according to the co-permittees, the Petitioners even received an advanced copy of the agreement as well. Staff was fully able to respond to the proposals. Petitioners were afforded 30 minutes to present anything they desired at the hearing. Notably, the parties to the negotiated proposals were allowed an opportunity to submit a joint presentation to the Los Angeles Water Board to explain the provisions of their agreement, and the Petitioners' presentation was not until after the joint presentation about the agreement. While staff did not endorse the proposals, both staff and Petitioners were fully aware of the proposals' contents and were fully able to respond to them. Regardless of whether the proposals were contained in the final staff recommendation, the issues about the structure of the MALs and whether they should even be included, as well as the level of effective impervious area (EIA) and other components of the low impact development (LID) provisions, have been debated vigorously by all stakeholders for the better part of two years. The Petitioners clearly knew that an aggressive LID program would be under specific consideration (if not by agreement with the co-permittees, certainly by the environmental groups themselves), as the environmental groups had been so advocating well before any agreement between the environmental groups and the co-permittees was even contemplated. The petitioners' professed lack of knowledge that the co-permittees

had agreed to withdraw their objections to the environmental groups' LID proposals does not in any way alter their knowledge of the environmental organizations' position over the long history of this permit proceeding. They had full knowledge and every right to present evidence and argument in opposition to the negotiated proposals, yet they chose not to do so.

Petitioners make much of their claim that they twice requested that the permit be recirculated before it was "finalized". However, they neglect to note that both of those requests were made after the permit had actually been adopted by a vote of the Los Angeles Water Board at the Board Meeting. At that point, there was nothing to recirculate. Notably, notwithstanding approximately 20 comment letters submitted by Petitioners, their representatives, and building interests prior to the Board Meeting about the negotiated provisions,[1] not one commenter requested additional time to review the negotiated provisions, or comment upon them, until after the Los Angeles Water Board had already adopted the permit.

The Petitioners are well aware that the Los Angeles Water Board can and does reject staff recommendations, and that it is well within the Board's province to consider stakeholder agreements, even those not endorsed by staff. The Petitioners have made no showing that the result would have been different had the matter been delayed, and despite their objections and a request to the State Water Resources Control Board (State Water Board) for a hearing in conjunction with their petition, they have not submitted an offer of proof to either the Los Angeles Water Board or the State Water Board about what evidence they would have submitted that they were prevented from submitting at the hearing. Accordingly, Petitioners' due process claims are unsupported and without merit.

RESPONSE TO CONTENTION # 2 – PETITIONERS' CLAIM THAT THE VENTURA PERMIT REGULATES MATTERS NOT SUBJECT TO THE NPDES PROGRAM IS CONTRIVED AND UNSUPPORTED

Nowhere in the petition do the Petitioners explain how the Ventura MS4 permit could apply to land area that is remote from the MS4 and that has no effect on MS4 water quality. The Petitioners cite no specific permit provisions to support such a novel claim about the reach of a storm sewer system permit. Like all other MS4 permits, the Ventura County MS4 permit obviously applies only to the MS4 footprint and the waters that flow into it, and nothing in the agreement between the environmental organizations and the co-permittees can be read as purporting to assert NPDES permit authority over, for instance, sheet flows that drain directly into a water body. Having failed to cite to any particular provision to the contrary, the Petitioners have failed to support this claim, and it should be dismissed.

RESPONSE TO CONTENTION # 3 - THE VENTURA PERMIT HAS NO BEARING UPON COMMON LAW "NATURAL FLOW" REQUIREMENTS AGAINST CONCENTRATING ONE'S OWN STORM FLOWS ONTO A NEIGHBOR'S PROPERTY

The Natural Flow Doctrine has no application to restrict the administrator or the state when implementing contemporary environmental law based upon federal statutory mandates. As the Los Angeles Water Board explained in its responses to comments (RTC 2.4) the common law requirements referenced by the Petitioners relate to the doctrines of nuisance and trespass with respect to adjoining or down-gradient properties, and that an up-gradient landowner may allow

[1] These letters are not in the record because they were received after the comment deadline. The Los Angeles Water Board will make them available to the State Water Board upon the State Water Board's request.

rainwater to flow to adjacent down-gradient property in its natural state without giving rise to a private nuisance cause of action in favor of the adjacent neighbor. The Petitioners note the corollary that increasing velocity or volume (as through channelization, development, or other means) may give rise to liability. The Petitioners' argument that common law nuisance principles somehow trump the public health, safety, and welfare authority embodied in a state's "police powers", or for that matter, the federal Clean Water Act, is without basis.

RESPONSE TO CONTENTION # 4 - THE PETITIONERS' CLAIM THAT THE ORDER REQUIRES OFFSITE FLOWS TO BE REDUCED BELOW NATURAL LEVELS IS A MISCHARACTERIZATION OF THE PERMIT. THE VENTURA PERMIT DOES NOT CONFLICT WITH STATE OR FEDERAL POLICIES THAT SUPPORT AND ENCOURAGE LOW IMPACT DEVELOPMENT.

The Petitioners make the false allegation on page 10:11-13 of their Points and Authorities (and throughout) that the negotiated EIA requirements prohibit all storm water from leaving a site except in the largest rains. The requirements do nothing of the sort. In fact, the Petitioners ignore the general rule and contend that the exception to the rule is the absolute requirement, and they mischaracterize the exception as well.

The general rule in the permit is that new or redeveloped parcels' Effective Impervious Area (EIA) must be 5% or less of the total project area. (See Permit, Section 4.E.III.1(a).) The exceptions, objected to by the Petitioners, only need apply if a 5% EIA is infeasible.

Specifically, the 5% need not actually relate to the entire project area—impervious areas may be "rendered ineffective" and excluded from the 5% EIA limitation to the extent runoff can be retained onsite (either through infiltration, reuse, or evapotranspiration). (See Permit, Section 4.E.III.1(b).) Thus, EIA may be greater than 5% and still comply with the provisions of the permit. For EIA to be rendered ineffective, the features must be properly sized to infiltrate, reuse, or evapotranspire: (1) the 85th% 24 hour runoff event, (2) the volume of annual runoff based on unit basin storage water quality volume, to achieve 80% or more volume treatment by methods endorsed in the Ventura County Technical Guidance Manual, or (3) the volume of runoff from a ¾ inch storm. (See Permit, Section 4.E.III.1(c).) In other words, the so-called prohibition on runoff only serves as a means of exempting otherwise impervious area from the 5% EIA requirement. This is far from the prohibition on runoff the Petitioners allege the permit to contain.

Furthermore, the permit includes additional alternative compliance provisions where Sections 4.E.III.1(a) and (b) are infeasible. (See Permit, Section 4.E.III.2.(a) through (c).) These provisions generally require a much greater 30% EIA, and treatment of the remaining runoff (that is, treatment of the runoff from the EIA portions of the project, which would be not greater than 30% of the project area). Even these treatment requirements are limited to, among other metrics, the first ¾ inch storm. (See Permit, Section 4.E.III.2.(c)(1)), which limits the treatment requirements to the metrics set forth in 4.E.III.1.(b)-(d).)

Mr. Rick Cole of the City of Ventura testified that Ventura County is a slow growth county (Transcript, pp. 336). Consequently, when integrated over a watershed-scale, the effect of individual projects subject to the negotiated EIA requirements would be mitigated by the effects of existing project on the overall hydrology. The Los Angeles Water Board relied on the testimony from the Environmental Groups and municipalities in which they agreed that these requirements were feasible. Far from a "radical departure" from LID policy, these provisions are consistent with established LID doctrinal components articulated by USEPA and the State

Water Board. Infiltration is beneficial for the region in that it recharges the groundwater table for reuse in areas generally arid in nature, and simultaneously sequesters pollutants that would otherwise impair surface waters. Infiltration will be increasingly necessary as water supplies dwindle due to climate change and population growth. While these requirements may or may not be appropriate in other urban areas, the Los Angeles Water Board was entitled to rely upon the assertions by the Co-Permittees that these provisions were feasible in the Ventura County MS4 footprint, especially given the context of the federal municipal storm water regulations, which put the onus on the permittees to propose the programs that would constitute MEP.

Notably, the Petitioners submitted a comment letter as part of their submittal to the tentative permit from USEPA, Region 9, to the Petitioners, in which USEPA expressed its support for the 5% EIA. (See Letter from Dr. Mark Grey, Construction Industry Coalition on Water Quality Letter, to Tracy Woods, Los Angeles Water Board, dated April 10, 2009, which begins on page E001177 of the Administrative Record). This was at a time where NRDC has previously argued in favor of a 3% EIA and the Petitioners were arguing that it should be 5%.

RESPONSE TO CONTENTION # 5 - THE VENTURA PERMIT DOES NOT UNLAWFULLY INFRINGE ON LOCAL GOVERNMENTAL AUTHORITY AND RESPONSIBILITIES TO REGULATE LAND USE PURSUANT TO CEQA

Similar claims were made and rejected by the California Court of Appeal in the matter of *County of Los Angeles v. State Water Resources Control Board.* The gravamen of the Petitioners' argument here is that cities regulated under an MS4 permit should be allowed to exempt themselves from specific permit requirements upon adopting a Statement of Overriding Considerations, pursuant to California Code of Regulations, title 14, section 15093. This claim has been posed to the State and Regional Water Boards in a variety of different settings, yet the response is the same. The broad policy bases articulated in the Public Resources Code and Code of Regulations that authorize a local agency from choosing an environmentally inferior project do not serve as exemptions from the requirements of state and federally mandated discharge requirements under the Porter Cologne Act or Clean Water Act. The informational purposes of CEQA itself were not intended to serve as a mechanism to exempt dischargers from their obligations under these regulatory statutes, including the obligation to reduce pollutant discharges to the maximum extent practicable. Incorporating a CEQA exemption from the permit's substantive requirements would be an abdication of the Los Angeles Water Board's responsibilities under, inter alia, Water Code sections 13160, 13263, and 13372.

Finally, it is notable that the Petitioners purport to raise this claim on behalf of the Cities and the County, who have not only not challenged the permit, but who have actually proposed these very provisions that the Petitioners deem to be an infringement on local control.

RESPONSE TO CONTENTION # 6 - THE VENTURA PERMIT IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The 5% EIA requirements and other components of the permit are supported by substantial evidence. The evidence related to the EIA requirement is aptly described in part in NRDC and Heal the Bay's Opposition to this Petition for Review, on pages 16 through 20.

Petitioners contend that Finding 19 contradicts the final permit. Los Angeles Water Board staff drafted this finding in response to the following comment submitted by NRDC on the third draft of the permit:

> "In the case of the Tentative Order, the findings and Tentative Order Fact Sheet provide no support for the Regional Board's decision not to apply a 3% effective impervious area limitation to all regulated projects, nor any support for the Regional Board's decision to allow redevelopment projects (and other projects where onsite implementation is a concern) to comply merely with the SUSMP treatment criteria. They also do not explain or substantiate the failure to address the other issues described in this letter."

The Petitioners are correct that Finding 19 should have been supplemented to reflect the Los Angeles Water Board's ultimate decision, including that the decision differed from the determinations and recommendations of staff. The Los Angeles Water Board requests that the State Water Board add the following sentence to the end of Finding 19:

> "Notwithstanding staff's findings, the Board is entitled and indeed the structure of the CWA contemplates that the Board may give deference to the assertions by the permittees of what they believe they should achieve."

RESPONSE TO CONTENTION # 7 - THE LOS ANGELES WATER BOARD'S INCLUSION OF THE NEGOTIATED EIA REQUIREMENTS DID NOT VIOLATE WATER CODE SECTION 13241

As noted in the Los Angeles Water Board's responses to comments, *City of Burbank* only requires consideration of the 13241 factors when permit conditions go beyond the requirements of federal law. Conditions to require permittees to control the pollution in storm water to the maximum extent practicable are required by federal law. Therefore, permit conditions that are within that requirement are not beyond federal law. As noted above, there is no evidence that the 5% EIA and related provisions, as adopted, are beyond maximum extent practicable. The co-permittees themselves view the requirements as practicable. While the building industry members may be key stakeholders, their entitlement to develop ultimately emanates from the co-permittees, and the building interests are necessarily subject to the land-use conditions, requirements, and policy determinations of the local governmental bodies. While they may not like those policies, the Cities are entitled to propose the means they believe is best for themselves to control storm water pollution—and the Los Angeles Water Board is entitled to give deference to the Cities and County when adopting their MS4 permit.

Nevertheless, even if a 13241 analysis was required, all MS4 permits require the use of BMPs to achieve a variety of purposes. The 13241 analysis performed by the Los Angeles Water Board included consideration of a variety of BMP costs and considerations. The Petitioners have made no showing that BMPs that they would use to comply with the negotiated provisions involve an inherently different cost metric to implement than those already analyzed.

CONCLUSION

The Petitioners have failed to demonstrate that the permit is in anyway inappropriate or improper. Accordingly, except with respect to Finding 19 as stated above, the Petition should be dismissed.

State Water Resources Control Board

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AUG 25 2009

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Dear Mr. Henderson:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: DENIAL OF STAY REQUEST
SWRCB/OCC FILE A-2023

Review of the above-referenced request for stay is complete. This review indicates that the request for stay in this matter fails to comply with the prerequisites for a stay as specified in California Code of Regulations, title 23, section 2053. Accordingly, your request is denied. The petition you filed with the State Water Resources Control Board concerning the above-mentioned matter is still under review. You will be notified of further action on your petition. The enclosed memorandum explains the deficiencies in your stay request.

If you have any questions about this matter, please contact Marleigh Wood, Senior Staff Counsel, in the Office of Chief Counsel, at (916) 341-5169.

Sincerely,

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Executive Director

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Arnold Schwarzenegger
Governor

TO: Dorothy Rice
Executive Director
EXECUTIVE OFFICE

FROM: Michael A.M. Lauffer
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: AUG 12 2009

SUBJECT: PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: PROPOSED DENIAL OF STAY REQUEST
SWRCB/OCC FILE A-2023

BACKGROUND

On May 7, 2009, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) adopted Order No. R4-2009-0057 [NPDES No. CAS004002] (Permit), a National Pollutant Discharge Elimination System (NPDES) permit issued to the Ventura County Watershed Protection District, County of Ventura and incorporated cities for discharges from a Municipal Separate Storm Sewer System (MS4). Timely petitions were filed by the Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality, and Building Industry Association of Southern California, Inc. (Petitioners), seeking review of the Permit. Petitioners also included an incomplete request for a stay of the Los Angeles Water Board action. Petitioners subsequently filed an amended request on July 7, 2009, including a declaration from Dr. Mark Grey, attesting to their claims in support of the stay request.[1]

Petitioners contend that adoption of the Permit violated their due process rights because new provisions introduced at the May 7, 2009 Los Angeles Water Board meeting were not a part of

[1] Dr. Mark Grey is identified as the Director of Environmental Affairs of the Building Industry Association of Southern California and the Technical Director of the Construction Industry Coalition on Water Quality.

the tentative permit previously circulated for public comment.[2] Petitioners also claim that the Permit oversteps the Water Boards' authority by requiring that new and redevelopment projects reduce effective impervious area (EIA) to five percent or less of the total project area, with exceptions for impervious surfaces rendered "ineffective" where runoff is fully retained onsite. Petitioners further contend that an economic analysis was required under Water Code section 13241. Claims of harm justifying a stay focus on costs to developers and planners in complying with new regulatory requirements set forth in the Permit.

ISSUE

Are Petitioners entitled to a stay of the Order under California Code of Regulations, title 23, section 2053?

DISCUSSION

No. The State Water Board has recognized the extraordinary nature of a stay remedy and places a heavy burden on a petitioner seeking a stay.[3] The State Water Board's regulations provide that a stay may be granted only if a petitioner alleges facts and produces proof of *all* of the following:

(1) substantial harm to Petitioner or to the public interest if a stay is not granted;
(2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted; and
(3) substantial questions of fact or law regarding the disputed action.[4]

The regulation also requires that a request for stay "shall be supported by a declaration under penalty of perjury of a person or persons having knowledge of the facts alleged."

A. Substantial Harm to Petition or to the Public Interest

Petitioners contend that Permit provisions governing new development and redevelopment will result in high costs to land use planners and property owners, and that this, together with wasted efforts and resources to comply with new rules that may be set aside by the State Water Board, constitute substantial harm to the Petitioners and to the public interest. Petitioners' declaration describes a "radical paradigm shift" from current practices governing development, with potential for harm resulting from sites being rendered undevelopable.[5] Petitioners also describe added time and expense resulting from the need for developers to undertake additional technical and feasibility analyses and for county personnel to begin immediate training "costing

[2] Petitioners further claim that the new provisions were part of a "secretly-negotiated side agreement" between "certain non-governmental organizations [who had] joined forces with certain representatives of the permittees. . . ." Petition of Building Industry Legal Defense Foundation, at 2.

[3] State Water Board Order WQ 86-1 (*City of Colton*).

[4] Cal. Code Regs., tit. 23 § 2053.

[5] Declaration of Dr. Mark Grey, p. 3-4.

countless hours and, at a minimum, hundreds of thousands of dollars."[6] Petitioners make no other attempts to quantify specific costs, instead referring to "incalculable but extremely large societal and collective costs . . . ."[7] Petitioners also allude to environmental harm resulting when downstream areas are "denied the stormwater that would otherwise flow away from the site."[8]

Petitioner fails to satisfy this requirement for issuance of a stay. The State Water Board has stated on many occasions that mere expense, even if relatively substantial, does not justify the granting of a stay.[9] The State Water Board has further clarified that the harm at issue in considering whether to grant a stay is harm that would occur while the petition is pending before the Board, not harm occurring over the term of the Permit.[10]

Broad and unsubstantiated allegations of costs that may result from requirements contained in the Permit, without any reference to the specific time period of petition review, do not constitute proof of substantial harm to Petitioners. Unspecified claims of environmental harms from retention of storm water are similarly unavailing. Further, the "incalculable" costs claimed by Petitioners are apparently based upon the assumption that Petitioners will prevail on the merits, resulting in additional costs associated with "efforts to return to the *status quo ante*."[11] Speculative harm occurring as a result of an eventual State Water Board order on the merits of the petition is not relevant to consideration of a request for stay.

B. Lack of Substantial Harm to Other Interested Persons or to the Public Interest

Petitioners' claims of lack of substantial harm to other interested persons or to the public interest are premised upon the idea that the provisions set forth in the prior permit were adequate and that no harm will result from a return to the prior regulatory scheme. It is unnecessary to consider whether these assertions constitute proof of lack of substantial harm to others because Petitioners have failed to satisfy the first of the three required elements.

C. Sustantial Questions of Fact or Law Regarding the Disputed Action

Petitioners raise issues of due process, Los Angeles Water Board authority pursuant to the Clean Water Act, and others. To the extent appropriate, these issues will be addressed when the petition is considered on the merits.

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[6] *Id.*

[7] *Id.* at 5.

[8] *Id.* at 4.

[9] WQO 2001-009 (*Pacific Lumber Company*), WQO 2003-0010 (*County of Sacramento*).

[10] WQO 2002-0007 (*County of Los Angeles, et. al.*).

[11] Building Industry Legal Defense Foundation, Supplemental Request for Immediate Stay, at 3.

CONCLUSION

Petitioners' request does not comply with the regulatory requirements for a stay. Therefore, I recommend that it be denied. I have attached a letter to that effect for your signature. If you should have any questions, please contact Marleigh Wood of my staff at (916) 341-5169.

Attachment

File
SB-AR-499

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Office of Chief Counsel
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P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

February 10, 2010

[via U.S. mail & email]
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Andrew@biasc.org

[via U.S. mail & email]
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[via U.S. mail only]
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Somach, Simmons, & Dunn
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Sacramento, CA 95814

[via U.S. mail only]
Mr. Michael Lewis
Construction Industry Coalition on Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, CA 91791

Dear Messrs. Henderson and Lewis and Mses. Egoscue and Dunham,

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: REQUEST FOR ADDITIONAL BRIEFING AND EVIDENCE
SWRCB/OCC FILE A-2023

State Water Resources Control Board (State Water Board) staff is currently reviewing the permit and administrative record associated with the above petition. As part of this review, staff requests further submissions from all interested persons on the issue of effective requirements for new development and redevelopment. The purpose of this request is to ensure that the State Water Board is in possession of the most recent and relevant analysis of effective methods to mitigate hydromodification impacts through municipal storm water permits.

Evidence and argument may be submitted addressing the following points:

1) Is there scientific basis and justification for reliance on the percentage of effective impervious area as an appropriate measure of water quality and stream channel degradation, and if so, please explain?
2) Are the percent effective impervious area thresholds in the adopted permit based on California studies and data?

3) How do the adopted new and redevelopment standards implementation and enforcement compare to use of runoff volume, infiltration, and flow-based standards?
4) Interim hydromodification criteria were eliminated from the adopted permit. How will this affect implementation of the permit?
5) How do the adopted new and redevelopment standards affect infill and urban re-use projects?

Responses must be received no later than March 11, 2010. If a response relies on evidence that was not in the administrative record before the Los Angeles Regional Water Quality Control Board, then the evidence must be submitted along with an explanation of why the evidence was not before the regional board and whether the evidence is permissible supplemental evidence under the State Water Board's petition regulations. (See, Cal. Code Regs., tit. 23, § 2050.6.) If a response relies on evidence in the existing administrative record, then an appropriate citation to the administrative record should be provided along with an appendix of relevant pages from the cited material.

Please note that this does not comprise a new comment period on the petition. Submissions addressing issues beyond the scope of the new and redevelopment provisions as outlined above will not be considered.

If you should have any questions, I may be reached at (916) 341-5169.

Sincerely,

Marleigh J. Wood
Senior Staff Counsel

cc: See next page

cc: Mr. Noah Garrison **[via U.S. mail & email]**
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Interested Persons List

February 24, 2010

Via Electronic Mail

Ms. Tracy Egoscue
Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, California 90013

Re: Administrative Record in Ventura County Municipal Stormwater Permit

Dear Ms. Egoscue:

On behalf of the Natural Resources Defense Council ("NRDC") and Heal the Bay, we write to alert you to an urgent matter involving apparent significant omissions from the administrative record in the Ventura County Municipal Stormwater Permit, SWRCB/OCC File A-2023, that requires staff's attention.

Upon review of the record prepared by the Regional Board, it appears that none of the documents and studies timely submitted by NRDC and Heal the Bay as exhibits to our March 6, 2007 and April 10, 2009 comment letters were included in the Regional Board's administrative record. It is likely that this omission of our submittals, which collectively number many hundreds of pages, reflects an inadvertent error, as an index we prepared to accompany the first document submittal on March 6, 2007 was included in the record (*see* Administrative Record at B001291-1305).[1] But the documents themselves, submitted on electronic disc, were not. In any case, the Regional Board's apparent omission of these documents in the administrative record precludes the State Board from properly considering the entire administrative record that was before the Regional Board—and may have in whole or in part prompted the State Board to pose some of the questions in its February 10, 2010 letter requesting additional briefing and evidence in this matter.

A list of the documents we believe have been improperly omitted from the administrative record is attached hereto. For ease of reference, we have included: copies of the letters

[1] The documents included on this index were timely submitted a second time by NRDC and Heal the Bay with the exhibits to our April 10, 2009 letter.

described above; the index to the first document submittal from March 6, 2007; a list of additional documents provided on April 10, 2009; and, a receipt from the messenger service we used to hand deliver the second document submittal disc to the Regional Board offices on April 10, 2009. It is incumbent on the Regional Board to correct the administrative record in this matter by providing these documents to the State Board, so that the State Board and all parties have an accurate record for review of those matters that were considered by the Regional Board. We also hope you will agree that it would be prejudicial to all involved to be in a position of responding to possible future State Board inquiries without access to the entire record that was considered by the Regional Board. For all of these reasons, we respectfully request that you correct this situation promptly. So that the State Board knows of this situation, we have copied appropriate legal counsel, as well as counsel for the Building Industry Association of Southern California, on this letter.

Should you or your staff have any questions, please do not hesitate to contact us.

Sincerely,

David S. Beckman
Noah Garrison
Natural Resources Defense Council

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Enclosures (5)

Exhibit A

NRDC
THE EARTH'S BEST DEFENSE

NATURAL RESOURCES DEFENSE COUNCIL

March 6, 2007

Via FedEx and electronic mail

Executive Officer and Members of the Board
California Regional Water Quality Control Board, Los Angeles Region
320 W. 4th St., Suite 200
Los Angeles, CA 90013

Re: Draft Ventura County Municipal Separate Storm Sewer System Permit (NPDES Permit No. CAS004002)

Dear Mr. Bishop and Members of the Board:

The Natural Resources Defense Council ("NRDC") is a national environmental organization with over 600,000 members, more than 100,000 of whom are California residents and approximately 2,700 of whom live in Ventura County. NRDC, along with Heal the Bay and Environment California, have reviewed the Draft Ventura County Municipal Separate Storm Sewer System Permit ("Draft Permit" or "Proposed Permit"), the third iteration of the co-permittees' Phase I municipal stormwater permit under the Clean Water Act's National Pollution Discharge Elimination System. NRDC, Heal the Bay, and Environment California submit the following comments to the Draft Permit.

We strongly support many aspects of the Draft Permit, and submit the following comments to underscore in particular the importance of specific provisions included in the Planning and Land Development Program that substantially improve the previous permit's program.[1] This letter further urges the Board to make certain targeted amendments to the Draft Permit's language to ensure that it meets the Clean Water Act's maximum extent practicable standard ("MEP") for municipal dischargers and most effectively addresses Ventura County's water quality problems. Finally, this letter also addresses and supports the importance of making modifications to the Permit's water quality standards provisions, TMDL implementation provisions, and monitoring program, all of which are currently deficient.

In particular, our comments focus on the Draft Permit's low impact development ("LID") requirements in the development planning program (Section 4.E). Low impact development uses a collection of site design and treatment controls to maintain the natural hydrologic character of developed sites, and has been demonstrated to be the most effective and cost-efficient method for managing storm water and protecting the environment.[2] The LID framework for new and redevelopment in the Draft Permit is a solid foundation for the Permit's Planning and Land Development Program.

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But if the Permit is to meet the goal of "implement[ing] a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP and achieve water quality objectives for . . . the County of Ventura," stronger provisions are necessary.[3] Therefore, we urge the Board to adopt language reflecting effective standards and a rapid phase-in of low impact development requirements for new and redevelopment projects, as well as lowering the threshold for applicability of LID and other post-construction best management practices to new and redevelopment projects. As discussed in this submittal, such an approach not only has numerous benefits with respect to a variety of water quality and supply objectives, but is necessary to meet MEP standard for municipal storm water runoff treatment and control. Moreover, NRDC has included in this comment package a special study focused on Ventura County by Dr. Richard Horner, one of the nation's leading storm water experts. This Study proves the technical feasibility of the Permit's LID provisions, as strengthened by our comments, and shows that they can be implemented feasibly in the full-range of development types, ranging from single family housing through large commercial establishments.

1. Water quality problems persist in Ventura County receiving waters.

Notwithstanding the past permit's programs, runoff volume, and erosion control,[4] significant water quality problems persist in Ventura County. Indeed, in 2006,

> [e]levated pollutant concentrations were observed at all monitoring sites during one or more monitored wet weather storm events, and at [specific sites] during one or more dry weather events.[5]

Not only has research showed that storm water runoff is a significant source of pollutants found in Southern California, but the State Water Resources Control Board has determined that "[m]unicipal point source discharges from urbanized areas remain a *leading cause* of impairment of surface waters in California."[6] And impairments to the beneficial uses of water bodies in the Ventura watersheds include many of the pollutants of concern identified by the Ventura Countywide Storm Water Monitoring Program.[7]

In light of the persistent water quality problems in Ventura County, the Board should use the opportunity presented by reissuance to modify the permit's structure and requirements to better achieve the underlying goals of meeting water quality objectives and protecting the beneficial uses receiving waters in Ventura County in a "timely, comprehensive, and cost-effective manner"[8] It appears that staff's proposal makes positive strides in this direction and that, with targeted but essential modifications, the Permit can meet the MEP standard and begin to measurably reduce water pollution.

2. Specific aspects of the 2000 permit likely contributed to the failure to see adequate water quality improvements over the past permit cycle.

The provisions of the previous permit included the designation of certain categories of development as requiring storm water quality mitigation conditioning under a SQUIMP.[9] Evidence indicating that water quality problems persist makes it clear that the steps taken in the previous permit[10] are failing to keep up with the increasing impacts of development in Ventura County. The following discussion highlights two specific aspects of the previous permit that likely contributed to the failure of the previous permit's SQUIMP program to achieve broad improvements in stormwater runoff: the thresholds at which stormwater control is triggered for various types of new development; and the insufficient emphasis on low impact development-based ("LID") best management practices ("BMPs").[11]

A. The existing thresholds for storm water mitigation appear to be arbitrary in light of persistent water quality problems.

It is apparent that the existing permit's thresholds for storm water mitigation conditioning in development projects were inadequate to meet water quality objectives.[12] As described above, water quality data for Ventura County indicates that the previous permit's BMP requirements for development projects have not affected the urban landscape at an acceptable pace. This reality, and the current performance of municipalities throughout the nation, supports the Draft Permits lowering of the thresholds for specific development project categories to 5,000 square feet.[13]

Indeed, the seemingly arbitrary nature of at least some of the existing threshold levels is further underscored by the observation that thresholds for some of the development categories used in the SQUIMP prepared under the previous permit are objectively large.[14] For instance, the threshold for commercial developments in the previous permit was 100,000 square feet.[15] To put this figure in perspective, 100,000 square feet is equivalent to 2.3 acres—larger than two football fields together—which is a very large development in any setting but represents an enormous development in the urban context. So-called big-box retail stores such as Home Depot, Target, and large grocery stores are typically 50,000 sq ft or more; these massive developments often would fall below the commercial priority project threshold under the existing permit, while it would take a "supercenter" type development to trigger the 100,000 square feet threshold in the commercial category.[16] Given the documented water quality challenges that remain and the centrality of the planning and development program's storm water mitigation requirements to achieving beneficial improvement, it is clear that substantially lower and more comprehensive thresholds are necessary. Thus the Draft Permit's language setting thresholds for post-construction BMP requirements at 5,000 square feet for Commercial, Restaurant, Retail Gasoline Outlets, etc. development categories is soundly supported.

B. Language in the previous permit was inadequate to ensure sufficient implementation of low impact development BMPs ("LID").

Although the previous permit contained no specific requirement for the use of LID-based BMPs in new development and redevelopment projects, the Stormwater Quality Urban Impact Mitigation Plan directed that certain site layout concepts reflecting LID principles be implemented in all categories of development. But even though the SQUIMP recognized these methods as a critical tool in reducing pollutant loading and runoff volume from developed areas, its provisions lacked clear, enforceable standards. For instance, the SQUIMP directed copermittees to require project proponents to conserve natural areas "if applicable" and to design development sites "to minimize, to the maximum extent practicable, the introduction of pollutants of concern" to the MS4. Though it is generally consistent with LID principles, such language does not provide project proponents and copermittees with clear standards—necessary both to promote implementation and to enable enforcement. For instance, this open-ended language fails to give guidance on how the copermittees should determine whether site design concepts that would conserve natural areas are applicable, and does not establish clear guidelines for what level of site-design BMP implementation constitutes the maximum extent practicable minimization of pollutant generation.[17]

Ultimately, while the previous permit allowed the copermittees' SQUIMP to make strides toward laying the foundation for LID practices including site design and other source control methods in Ventura County, its language left too much latitude to project proponents and permitting authorities to actually achieve widespread use of low impact site design strategies in new development. By contrast, the Draft Permit includes specific numeric requirements to limit effective impervious area, maintain natural hydrology, and treat site runoff. These provisions are critical to the success of the new permit in reducing pollutant loading and storm water runoff rate and volume, and we fully support their inclusion, with certain modifications, proposed below. In addition, as discussed below, we urge the Board to strengthen the Draft Permit's LID requirements to ensure the timely and robust implementation of these methods, which are widely recognized as the most effective tool to decrease storm water runoff volume and pollutant loading.

3. To meet the Clean Water Act's MEP requirement, the Permit must include up-to-date, comprehensive LID requirements for new development and redevelopment.

The Clean Water Act requires municipal discharges to reduce storm water pollution to the maximum extent practicable ("MEP"), a standard that continually evolves and improves as better and better technologies become available and are demonstrated to be effective.[18] As noted in the Draft Permit, the MEP standard requires municipalities to "evaluate what is effective and make improvements" to best management practices in their MS4 permits in each successive permit iteration in order to meet water quality objectives."[19] It is widely recognized[20]—and the Regional Board and staff have repeatedly emphasized[21]—that urban development increases impervious land cover and exacerbates problems of storm water volume, rate, and pollutant loading. Development and redevelopment activities that occur without effective post-

construction BMPs contribute to these problems. We strongly support the Draft Permit's inclusion of a catch-all provision to the development planning program, the effect of which is to condition development projects disturbing one acre or more of land upon inclusion of storm water controls. The inclusion of catch-all categories for storm water quality mitigation conditioning in other MS4 permits demonstrates that this aspect of the permit is feasible and practicable, and therefore necessary to meet MEP. (See examples below). But in addition to Ventura County's persistent water quality problems, more-inclusive programs in comparable communities and the Phase II MS4 requirements indicate that the proposed catch-all provision for development projects is under-inclusive and must be amended in the reissued Permit.

For instance, states, counties, and cities across the nation have adopted requirements to address runoff from development projects that are more inclusive and stringent than the Proposed Permit would mandate:

- City of Santa Monica, California - defines "new development," to which specific storm water runoff control requirements apply, as "any construction project that (a) results in improvements to fifty percent or greater of the square footage of a building, (b) creates or adds at least five thousand square feet of impervious surfaces, or (c) creates or adds fifty percent or more of impervious surfaces." (Santa Monica Municipal Code, Chapter 7.10.030(d)(3));

- Contra Costa County, California – applies storm water runoff control requirements to "new and redevelopment projects that create 10,000 square feet or more of impervious area." (RWQCB, San Francisco Bay Region, Contra Costa Countywide NPDES Municipal Stormwater Permit Amendment Order No. R2-2003-0022 (amending Order No. 989-058, NPDES Permit No. CAS0029912) at pp. 9-10 (lowering previous one-acre threshold for the application of performance standards effective August 15, 2006);

- State of New Jersey - defines "major development," to which specific storm water runoff control requirements apply, as "any development that ultimately provides for disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more." (New Jersey Stormwater Rules, N.J.A.C. § 7:8-1.2);

- State of Washington – applies numeric storm water treatment requirements to any project adding 5,000 square feet or more of new impervious surface. (Phase I Municipal Stormwater NPDES General Permit (Draft Feb. 15, 2006) Appendix I (Minimum Technical Requirements for New Development and Redevelopment), at pp. 7, 8, 20);

- State of Maryland – requires storm water management plans for any development that disturbs 5,000 square feet or greater. (Maryland Code, Title 26, Subtitle 17, Chapter 2, §5B; see also Maryland Model Stormwater Management Ordinance (July 2000) at pp. 2, 5, 8);

- City of Portland, Oregon – employs "a citywide pollution reduction requirement for all development projects with over 500 square feet of impervious development footprint area, and all existing sites that propose to create new off-site stormwater discharges." (Stormwater Management Manual (adopted July 1, 1999; updated September 1, 2004) Chapter 1.5.2 (Pollution Reduction Requirements) at p.1-25);

- Stafford County, Virginia – uses an exemption approach under which low impact development practices apply to all development except a) mining/oil & gas operations; b) agriculture; c) *linear development projects that are less than 1-acre, insignificant increases in peak flow, and no flooding or downstream erosion problems*; d) single family not part of a subdivision; e) structure ancillary to single-family homes; and e) "land development projects that disturb less than two thousand five hundred (2,500) square feet of land." (Stafford County Muni. Code § 25.5-1(f).)

These examples illustrate that applying specific storm water mitigation requirements to all development and redevelopment projects that disturb greater than 5,000 square feet is practicable. Indeed, they show that an appropriate new development threshold for SUSMP purposes is 5,000 square feet or less for all development, no matter its characterization as a restaurant, housing development, or other category.

Moreover, the Draft Permit's one-acre threshold for new development projects' storm water control conditioning is only as inclusive as the EPA threshold for *Phase II* MS4s.[22] That the Draft Permit's catch-all threshold is no more progressive than the Phase II requirements is significant because the Phase I Permits and rules have been issued for nearly 15 years now, while Phase II Permits are first generation permits throughout the nation. Indeed, in promulgating Phase II rules EPA gave "maximum flexibility" to smaller cities since they were obtaining permits for the first time.[23] This comparison makes it impossible to justify a one-acre threshold in the Ventura County permit.

Not only does 5,000 square feet represent the appropriate threshold for the catch-all category under the MEP standard; it would further the purpose of low impact development ("LID") practices, i.e. expressly to ensure that when historically-open-space areas in Ventura County undergo urbanization, the opportunity to mitigate the adverse impacts of storm water pollution from urbanization is not lost.[24] (We have included "redline" edits to the Draft Permit that effectuate this and other comments in this letter, attached hereto as Attachment III). The new permit's catch-all provision for new development is of critical importance in ensuring comprehensive storm water control. For as the Draft Permit's findings indicate, "[d]evelopment and urbanization increase pollutant loads, volume, and discharge velocity," and significant adverse impacts to the biological and physical integrity of receiving waters can be observed as a result of the conversion of as little as three percent of natural cover to impervious surfaces.[25]

In light of the rapid pace of development in Ventura County, the persistent storm water pollution problems County's receiving waters, comparison to the Phase II MS4 requirements,

and to reflect consistency with thresholds used in other regions and states, it is apparent that a 5,000 square feet threshold applicable to all types and categories of development is consistent with the MEP standard. Such a standard, therefore, must be included in the Draft Permit.

4. LID practices have significant benefits over conventional BMPs.

LID practices, including site design, source control, and soil-based treatment control techniques are often more effective than many types of conventional structural treatment BMPs for protecting water quality. By preventing site runoff altogether, source control practices can often eliminate the necessity of addressing sources of pollution, rather than attempting to remove a percentage of the pollution after it has entered stormwater runoff.[26] In fact, LID practices offer myriad benefits—including both the primary benefits of pollution reduction and reducing storm water runoff volume and rate, as well as secondary benefits such as greater cost-effectiveness, groundwater recharge, and habitat protection—over conventional BMPs. NRDC's report on storm water management strategies, *Rooftops to Rivers: Green Strategies for Controlling Stormwater and Combined Sewer Overflows* (2006), comprehensively addresses both the primary and secondary benefits of LID practices and is included with these comments as Attachment II.

Moreover, NRDC commissioned a formal study and report by a leading, nationally-recognized expert, Dr. Richard Horner, entitled *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County* (2007) (attached hereto as Attachment I and referred to herein as the "Horner Ventura County Study"). Dr. Horner confirms that the benefits of LID would be substantial in Ventura County and that these benefits can, in fact, be obtained given local building patterns. The Report verifies that implementing LID practices would make the Permit more consistent with MEP and is necessary to meet water quality objectives. It also specifically demonstrates that the Permit's LID requirements, as modified as described below to be more protective of water quality, are feasible and practicable in the full-range of development types and approaches typical in Southern California.

A. The primary benefits of low impact development practices are proven and effective.

In the context of the NPDES municipal storm water permit for Ventura County, the primary benefits of LID techniques are reducing runoff volume, rate, and pollution load—results that have been studied and documented in dozens of reports, case studies, and pilot projects in California and across the nation.[27] These primary benefits are described in great detail in the materials that accompany this letter, including reports by state and federal government agencies, building industry organizations, scientists, and non-governmental organizations.[28] Indeed, many of the reference materials suggested in the copermittees' 2000 SQUIMP address low impact development.[29] For instance, the copermittees' SQUIMP recommends *Start at the Source* (Bay Area Stormwater Management Agencies Association, 1999), as a guide for the selection of BMPs for development planning.[30] This document discusses the application of LID strategies in various development contexts, noting that LID practices "are a collection of *proven* methods and

techniques that integrates stormwater management into planning and design, that reduces overall runoff, and manages stormwater as a resource."[31] The overwhelming body of literature shows that LID strategies are effective and can be cost-saving in both the short and long-term.

B. Implementing low impact development practices for storm water runoff control has significant secondary benefits.

In addition to helping reduce pollutant loading in storm water and reducing the volume and rate of storm water runoff, LID practices offer other economic, aesthetic, and practical benefits to developers, municipalities, and homeowners in addition to benefiting natural ecosystems by conserving natural resources such as soil, water, and vegetation and restoring natural hydrologic processes in the watersheds. The following summary of the secondary benefits of LID practices is but an overview of the voluminous information in the resources provided in Attachment V. (See Attachment IV, providing a table of contents to the materials in Attachment V).

Groundwater recharge – Groundwater supplies in Ventura County, which represent most of its non-imported freshwater, are pressured by overdrafting.[32] Maintaining abundant groundwater supplies is important because these aquifers not only provide drinking water but also help maintain base flow essential to the biological and habitat integrity of streams.[33]

As Ventura County becomes more developed, a much larger percentage of rainwater hits impervious surfaces including streets, sidewalks, and parking lots rather than infiltrating into the ground. By using LID techniques that reduce the amount of impervious surfaces and increase vegetation and soil features, the landscape can retain more of its natural hydrological function.[34] Thus, LID practices have the added benefit of recharging groundwater aquifers and preserving baseflow to streams and wetlands.[35]

Improving groundwater supplies in Southern California would also save money now spent on imported water, and "may be the key to continued development in the area."[36] As the Board Members are no doubt well aware, Southern California faces serious water supply challenges.[37] Ventura County already imports most of its water.[38] But continued, rapid growth puts increasing pressure on the local water resources, including water supply. The traditional storm water management regime, with its infrastructure emphasis on collection and conveyance, simply wastes a valuable resource.

For instance, the Metropolitan Water District of Southern California ("MWD"), which supplies the Ventura County, charges $331 to $427 per acre-foot for untreated water, and $478 to $574 per acre-foot for treated water.[39] On average, the wholesale cost of untreated water is $379 per acre-foot and treated water is $526 per acre-foot. Table 1 shows the economic value of water retained by LID practices across six typical development types (which are further described in Attachment I). As the Horner Ventura County Study proved, LID practices have the ability to capture 100% of storm water runoff in many typical development types. Captured water can recharge the water supply or be otherwise reused; in both scenarios, LID's runoff prevention

creates a significant economic benefit that represents substantial cost savings, as further shown in Table 1.

Table 1. Post-Development Water Saving Comparisons[40, a]

	MFR	Sm-SFR	REST	OFF	Lg-SFR	COMM
Annual post-development water recharged from site with basic treatment BMPs	4.39-7.99	1.88-2.62	0.45-0.65	1.76-2.10	82.0-114	0.80-3.03
Annual post-development water recharged and harvested from site with LID	13.4	3.72	0.95	2.60	162.0	6.37
Annual water saved through LID per site	5.41-9.01	1.10-1.84	0.30-0.50	0.50-0.84	48.0-80.0	3.34-5.57
Value of annual LID water savings per site (untreated water)	$2,050-$3,415	$417-$697	$114-$190	$190-$318	$18,192-$30,320	$1,266-$2,111
Value of annual LID water savings per site (treated water)	$2,846-$4,739	$579-$968	$158-$263	$263-$442	$25,248-$42,080	$1,757-$2,930

[a] Figures given in acre-feet
[b] MFR (156-unit multi-family residential complex); Sm-SFR (23-unit single-family residential development); REST (3220-sq ft restaurant); OFF (7500-sq ft office building); Lg-SFR (1000-unit single-family residential development); COMM (2-acre commercial development)

Minimize infrastructure requirements – Low impact development practices can also reduce conventional stormwater drainage infrastructure, such as pipes, gutters, and detention basins, thereby reducing infrastructure costs.[41] Traditional curbs, gutters, storm drain inlets, piping and detention basins can cost two to three times more than engineered grass swales and other low impact development techniques to handle stormwater runoff from roadways.[42] Clustering homes can reduce infrastructure costs to the builder, since fewer feet of pipe, cable, and pavement are needed, and maintenance costs are reduced for homeowners.[43] "Studies in Maryland and Illinois show that new residential developments using green infrastructure stormwater controls saved $3,500 to $4,500 per lot (quarter- to half-acre lots) when compared to new developments with conventional stormwater controls."[44]

Low impact development can also minimize the need for irrigation systems.[45] This can be crucial in a hot, dry climate, where as much as 60 percent of the municipal water demand can be attributed to irrigation.[46] LID techniques can even improve air quality by filtering air pollution and helps to counteract urban heat island effect by lowering surface temperatures.[47]

Increased parkland and wildlife habitat, preserving natural features and natural processes – LID strategies include vegetative and grassy swales, tree-box filters, and preserved vegetation, thereby increasing the amount of green spaces in a community.[48] These strategies can also protect regional trees and flora and fauna.[49] Thus, LID measures result in less disturbance of the development area and conservation of natural features.[50] In fact, harvesting rainwater for use in gardens, rather than allowing stormwater runoff into storm drains, can even result in "bigger, healthier plants" because rainwater is better for plants than chlorinated tap water.[51]

Using LID techniques, development can be reconfigured in a more eco-efficient and community-oriented style.[52] Clustering homes on slightly smaller lot areas can allow more preserved open space to be used for recreation, visual aesthetics, and wildlife habitat.[53] Builders

in many areas have been able to charge a premium price for "view lots" facing undisturbed natural vistas, or pond areas that also function as bioretention cells.[54]

Enhanced property values – In addition to the aesthetic appeal of more parkland and vegetation, "greening" a neighborhood can often increase property values.[55] "Visitors stroll down Seattle's 'SEA [Street Edge Alternatives] Streets' project marveling at the beautiful landscaping while residents in adjacent blocks continually ask the city when their street will be redesigned to be a 'SEA Street.'[56] The NOAA Coastal Services Center reports that the Trust for Public Lands and National Park Service provide many examples of communities whose property values increased due to their proximity to open space. For example, a cluster development in New York that preserved 97 acres of natural wooded environment is benefiting from its open space. One developer commented, "It may not be the woods that bring (buyers) to us initially, but it seems to make all the difference when they see what it's like."[57]

Cheaper development costs – LID not only raises property values for owners, but it can result in more cost savings for developers as well.[58] Using LID can reduce land clearing and grading costs, potentially reduce impact fees and increase lot yield, and increase lot and community marketability.[59] Among other industry organizations, the National Association of Home Builders recognizes LID's economic and environmental desirability:

> Ever wish you could simultaneously lower your site infrastructure costs, protect the environment, and increase your project's marketability? Using Low Impact Development (LID) techniques you can. LID is an ecologically friendly approach to site development and storm water management that aims to mitigate development impacts to land, water, and air. The approach emphasizes the integration of site design and planning techniques that conserve natural systems and hydrologic functions on a site.[60]

For example, the Gap Creek residential subdivision in Sherwood, Arkansas used LID methods instead of conventional methods. The results were 17 additional lots, $3000 more per lot than the competition, $4800 less cost per lot, 23.5 acres of green spaces and parks, and ultimately, over $2.2 million in additional profit.[61]

5. The new Permit should ensure full implementation of the most effective storm water management strategies by setting clear, enforceable low impact development requirements.

The need for better storm water management remains. Indeed, urban runoff continues to be a leading cause of water quality impairment in California and Ventura County.[62] NRDC recognizes and applauds aspects of the Draft Permit that represent significant improvements over the past permit—especially its strong emphasis of LID practices. In particular, we note that the addition of a catch-all category for post-construction BMP-conditioned development projects, the inclusion of a maximum level of effective impervious area for development projects, and

lower thresholds for specific categories of development (e.g. commercial) mark a substantial improvement in the development planning portion of the permit. But more is needed if the Permit is to meet the MEP standard and effectively reduce water pollution and its impacts. As discussed previously, studies show that impacts to receiving waters result when any natural areas are converted to impervious surface. And a voluminous body of literature shows that LID is effective, practicable and available—and therefore represents the MEP standard. In light of this overwhelming evidence, and given the scope of the storm water challenge that still confronts Ventura County, we urge the Board to adopt the Draft Permit with the following specific amendments in order to more timely attain water quality objectives and meet the MEP standard.

As noted throughout the following discussion of our proposed amendments, these changes have precedent in analogous permits, codes and programs currently in effect in other municipalities in California as well as states and municipalities across the country. Moreover, Dr. Horner's report (at Attachment I) demonstrates that the amendments proposed by NRDC are both necessary and practical in Ventura County. This report specifically shows, based on detailed analysis, that the Permit's LID provisions can be implemented feasibly in a full-range of development types, ranging from single family housing through large commercial establishments, consistent with existing sit layouts and designs.

A. Lower the "catch-all" category threshold for post-construction storm water mitigation requirements from one acre to 5000 square feet to achieve broader implementation of low impact site design BMPs and other source control and treatment BMPs. This "catch-all" category would cover all development types, whether already listed in the post-construction storm water BMP program or not, but would not supersede lower thresholds that already apply to some of the development categories such as parking lots. NRDC's edits to the language in the Proposed Permit would require a development to implement post-construction treatment controls and BMPs to mitigate storm pollution if it met (1) the development type and sizing criteria in existing categories in the Draft Permit or, if it did not meet one or both criteria, (2) if it took place on or disturbed more than 5,000 square feet, no matter its type. As discussed above in section 3, this threshold is in place in other jurisdictions around the nation.

B. Lower the maximum allowable Effective Impervious Area in new development and redevelopment projects from five to three percent to more fully control storm water runoff at its source. As the Draft Permit's findings acknowledge, the scientific literature demonstrates that significant adverse impacts to the physical habitat and biological integrity of receiving waters occurs with the conversion of as little as three percent of natural areas to impervious surfaces.[63] Other west coast studies show a direct correlation between the creation of new impervious surface and impacts to receiving waters at *all* levels.[64] In light of the well-documented connection between impervious surface quantity and receiving water quality, the Draft Permit's setting the maximum EIA for new development and redevelopment projects at five percent all but endorses biological and chemical degradation. This simply cannot be justified, and we doubt that the Draft permit intends to create this result. Furthermore, as Dr. Horner discusses in his Ventura County-specific report, a three-percent standard is feasible and practicable in typical developments for a full range of land uses in Ventura County.

C. Require that pervious areas be engineered (e.g. soil amendment) to handle runoff from impervious areas so that runoff from impervious areas does not increase over its natural levels as a result of receiving runoff from Not Directly-Connected Impervious Areas (NCIAs). This important requirement may in fact be covered in the Draft Permit's hydromodification section (Part 4.E.II.1(a)),[65] but the current language in the development planning section is unclear. We urge the Board to clarify this requirement with respect to the maximum EIA requirement to avoid the result that runoff from impervious areas exceeds the capacity of a site's available pervious areas to effectively retain, filter, or infiltrate that runoff.

D. Emphasize a full range of low-impact development source reduction techniques such as soil amendment, water harvesting, and infiltration trenches in describing available methods of disconnecting Effective Impervious Areas to reduce runoff. As Dr. Horner's report demonstrates, LID-based source reduction techniques are both commonplace and effective, especially when implemented in conjunction with dispersion through vegetated areas.[66] The Draft Permit currently advances a powerful source reduction concept by noting that EIA can be rendered "ineffective" by draining impervious areas to vegetated swales. The omission of other effective and efficient LID source reduction tools that can be used to reduce the amount of EIA in a given development project appears to be an oversight, and we urge the Board to amend the permit to explicitly refer to a broad range of LID methods that complement and provide additional ways to meet the cap on allowable EIA.

E. Set numeric treatment criteria for post-construction BMPs for development projects greater than 50 acres. In light of evidence demonstrating the adverse impacts of urbanization—specifically, of the creation of impervious surface—we strongly support the Draft Permit's inclusion of separate, specific provisions for ultra-large development projects.[67] However, it is important that in addition to designing project-specific hydrodynamic models, such projects be required to comply with the same volumetric treatment control and hydrodynamic treatment control standards that apply to all other development.

F. Shorten the timeline for copermittees to develop guidelines for LID to three months. The Draft Permit allots 18 months to the development of a LID Technical Guidance Manual that would include specifications for a range of site design strategies. The region's persistent water quality problems demand that full LID implementation be undertaken in development planning as quickly as possible. In light of the copermittees' apparent familiarity with LID concepts[68] and the abundance of available reference materials on LID practices (including technical manuals and guidance documents), an 18-month period for developing LID guidelines cannot be justified. Not only is three months ample time to complete a LID technical manual, it better reflects the maximum practicable effort required by the MEP standard and is more consistent with the Board's stated goal of addressing water quality problems as quickly and efficiently as possible.[69]

6. The Draft Permit's monitoring program must be adequate to determine compliance with the Permit's requirements.

A fundamental aspect of the Clean Water Act is the requirement that a permittee undertake a self-monitoring program sufficient to determine compliance with its NPDES permit. (See 40 C.F.R. § 122.44(i)(1) (stating that every NPDES permit shall require the permit holder to monitor the mass and volume of each limited pollutant "*to assure compliance with permit limitations*") (emphasis added); 40 C.F.R. § 122.41(a) ("The permittee must comply with all conditions of [its] permit."); 40 C.F.R. § 122.41(j) (requiring that a permittee's monitoring records contain both the techniques it employed, and the results of its monitoring analysis).) The Act further requires each permittee to report to the issuing agency on its compliance with the permit as determined from the monitoring program. (See *Sierra Club v. Union Oil Co. of California* (N.D. Cal. 1988) 716 F.Supp. 429, 434-35; 33 U.S.C. § 1318.)[70] "Unless a permit holder monitors as required by the permit, it will be difficult if not impossible for state and federal officials charged with enforcement of the Clean Water Act to know whether or not the permit holder is discharging effluents in excess of the permit's maximum levels." (*Sierra Club v. Simkins Industries, Inc.* (4th Cir. 1988) 847 F.2d 1109, 1115.)

This principle holds true in other, similar contexts as well. For example, section 504(a) of the Clean Air Act requires that each permit "shall include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements." (*Natural Resources Defense Council, Inc. v. U.S.E.P.A.* (D.C. Cir. 1999), 194 F.3d 130, 133 (quoting 42 U.S.C. § 7661c(a)).) And in *Natural Resources Defense Council, Inc. v. Texaco Refining & Marketing, Inc.* (D. Del. 1998) 20 F.Supp.2d 700, the court required Texaco to undertake an extensive monitoring program in order to adequately assess the nature and impact of any noncomplying pollutant discharges from its facility.

Here, however, the monitoring program in the Draft Permit is inadequate to achieve these objectives because the monitoring program does not require measures that will allow permittees, the Regional Board, or other stakeholders to determine whether the MS4 is in fact causing or contributing to violations of water quality standards.

At the heart of the Draft Permit are the prohibitions in Parts 1 and 2:

- "Discharges into and from the MS4 in a manner causing or contributing to a condition of pollution, contamination or nuisance (as defined in Cal. Water Code § 13050), in waters of the State are prohibited." (Part I.A.1);

- "Discharges from the MS4, which cause or contribute to exceedences of receiving water quality objectives for surface waters are prohibited." (Part I.A.2);

- "Discharges from the MS4 that cause or contribute to a violation of water quality standards are prohibited." (Part 2);

Yet the monitoring program is inadequate to actually make any of these determinations. First, the Mass Emissions monitoring in the Draft Permit is inadequate. The Permit requires the Principal Permittee to monitor mass emissions from 5 stations. (Draft Permit at p. F-2). However, the Ventura County's website states that, "The Mass Emission drainage areas are much larger than the drainage areas associated with Receiving Water sites, and include other sources of discharge, such as wastewater treatment plants, non-point sources, and groundwater discharges."[71] Thus, monitoring mass emissions sites cannot achieve the goals required by the Permit because, as the permittee admits, these sites include other sources of discharge. So it will be unknown whether exceedences are being "contributed" to by the MS4, or whether they are from wastewater treatment plants, non-point sources, or groundwater discharges, for example.

The Draft Permit also requires receiving water monitoring in the form of tributary monitoring. (Draft Permit at p. F-7). Again, Ventura County's website states that, "Receiving water monitoring is designed to characterize the quality of receiving waters rather than discharges to the receiving waters."[72] Exceedences of water quality standards found in receiving waters might be caused from a variety of sources. Thus, this type of monitoring is also inadequate to determine whether discharges from the MS4 are causing or contributing to water quality violations.

Indeed, the Ventura County's 2005-2006 annual monitoring report reflects these inadequacies. Despite recognizing that the Permit requires them to "determine whether discharges from their municipal separate storm sewer system are causing or contributing to an exceedence of water quality standards,"[73] nowhere is such a determination actually made. Instead, the County states that "neither USEPA nor the State has established procedures for making this type of determination."[74] Rather, the County "conducted a preliminary assessment of receiving water and discharge monitoring data to identify potential water quality issues."[75] In fact, the 2005-2006 annual report recognizes water quality exceedences of, among other constituents: e.coli, fecal coliform, mercury, aluminum, nickel, TSS, and pesticides. Yet the report never actually answers this question of whether the MS4 is "causing or contributing" to exceedences of water quality standards as required by the current permit and by federal law.

To make the type of determination required by the Permit, one would need (1) end-of-pipe testing results to determine what pollution is coming from the MS4; and (2) a way to link those end-of-pipe results to a discharge from the MS4. Further, a method would need to be in place to determine which co-permittees are responsible for water quality violations.[76] As currently written, however, the Draft Permit's monitoring program is wholly inadequate to achieve these objectives and therefore is contrary to federal requirements.

7. Municipal action levels are useful as interpretations of the MEP standard but referencing them in the receiving waters section of the Permit impermissibly "mixes apples and oranges."

NRDC supports staff's important effort to quantify in a more transparent manner the federal minimum Maximum Extent Practicable standard ("MEP"). (33 U.S.C. §

1342(p)(3)(B)(iii).) The so-called "MAL" approach, however, should not be referenced in Part II of the Draft Permit, its "Receiving Water Limitations." As staff knows, MEP is a technology-based standard, while receiving water limits express a requirement to maintain an empirical condition measured in the water sufficient to meet adopted water quality standards. They are separate and essential permit terms. While, as discussed below, MEP may be sufficient to meet water quality standards, this is not always the case, and MEP is not expressed in terms of water quality outcome, but rather a level of discharger effort based on available technologies. The current reference to MALs in the Section II may be misinterpreted to mean that MALs are numeric water quality-based effluent limits—and they clearly are not WQBELs.

Technology-based requirements are effluent limitations based on specified levels of technology for the reduction of water pollution. (33 U.S.C. § 1311(b)(1)(A); *Communities for a Better Environment v. State Water Resources Control Bd.* (2005) 132 Cal.App.4th 1313, 1320.) The technology-based standard applicable to municipal stormwater dischargers requires controls for stormwater to the "maximum extent practicable," or "MEP." (33 U.S.C. § 1342(p)(3)(B)(iii).) With respect to dry weather discharges from the storm drain system, referred to as non-stormwater discharges, the statutory requirement is to "effectively prohibit" all such discharges. (*Id.* § 1342(p)(3)(B)(ii).)

The federal maximum extent practicable standard is not defined in the Clean Water Act, and, thus, the Regional Water Board and the State Water Board, as the lead expert agencies, have appropriately described the standard. (See *Building Industry Ass'n of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, 889.) The MEP standard consists of choosing solutions and treatment technologies based on a number of broad factors. MEP focuses "mostly on technical feasibility, but cost is also a relevant factor." (*In the Matter of the Petitions of the Cities of Bellflower et al.* (Oct. 5, 2000) State Water Board Order WQ 2000-11.) Other factors are effectiveness, regulatory compliance, and public acceptance. (*BIA, supra,* 124 Cal.App.4th at p. 876, fn. 7; Elizabeth Jennings, Senior Staff Counsel, State Water Board, *Definition of "Maximum Extent Practicable"* (Feb. 11, 1993).) By setting MALs, the Regional Board is interpreting MEP, a technology-based standard; it is not setting a numeric water quality-based effluent limit.

By contrast, in the Clean Water Act, Congress supplemented technology-based effluent limitations with "water quality-based" limitations "so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels." (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 620.) In many instances, compliance with technology-based limits will produce sufficient pollution reduction to meet water quality standards, without any more stringent regulation. (See, e.g., 40 C.F.R. § 130.7(b)(1)(i)-(iii) (noting that additional controls are necessary when "technology-based" limitations are not adequate).) But where technology-based standards do not provide, or are not expected to provide, sufficient pollution reduction for local water quality, given its actual or desired use, water quality-based standards are imposed. (See *Burbank, supra,* 35 Cal.4th at p. 620.)

Water quality standards are empirical measures of the "permissible amounts of pollutants allowed in a defined water segment" and are expressed as either numeric effluent limits for specific pollutants in accordance with CWA section 303 (e.g., "x-milligrams of pollutant per y per liter of effluent") or as narrative conditions (e.g., "prohibition of toxic conditions in receiving waters. Hence, water quality standards serve as the basis of effluent limitations intended to assure that a water body remains healthy.

Four recent Court of Appeal cases in California have addressed the relationship between technology-based standards and water quality-based limitations in municipal storm water permits. (*BIA, supra*, 124 Cal.App.4th 866; *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.—Santa Ana Region* (2006) 135 Cal.App.4th 1377.) These decisions came about through a series of challenges to stormwater permits (except in the instance of *Arcadia,* as discussed below) which focused on the interpretation of CWA section 402(p)(3)(B), added as part of the 1987 CWA amendments.

In *Building Industry Ass'n of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866, review denied Mar. 30, 2005, the court held that the "such other provisions" clause of section 402(p)(3)(B)(iii) invests EPA or Regional Water Boards with discretion to impose permit limitations necessary to meet water quality standards—even if the limits require pollution reductions greater than the technology-based MEP standard mandates. (*BIA, supra,* 124 Cal.App.4th at p. 884.) Thus, EPA or Water Boards can issue storm water permits requiring even *strict* compliance with water quality standards regardless of whether that imposes obligations on dischargers in excess of those associated with the federal MEP standard. (*Id.* at p. 871.)

On the heels of *BIA*, the Court of Appeal for the Fourth District issued two more decisions that also deal directly or indirectly with municipal storm water permits in Southern California—*City of Arcadia* and *City of Rancho Cucamonga*. *Rancho Cucamonga* found that a municipal storm water permit did not exceed the MEP standard, but that under *BIA*, the water boards had the authority "to impose municipal storm sewer control measures more stringent than a federal standard known as 'maximum extent practicable.'" (*Rancho Cucamonga, supra,* 135 Cal.App.4th at pp. 1388-89 (citing *BIA, supra,* 124 Cal.App.4th at p. 871).) The court in *Arcadia* agreed. (*Arcadia, supra,* 135 Cal.App.4th at p. 1429; see also *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1166-67 ("EPA has the authority to determine that ensuring strict compliance with state water-quality standards is necessary to control pollutants. . . . [T]he EPA's choice to include either management practices or numeric limitations in the permits was within its discretion.").)

For these reasons, referring to MEP, or MALs, in a section of the Draft Permit that mandates that action be taken sufficient to meet water quality standards is erroneous and conflates separate, distinct requirements, which both must be reflected clearly in the Draft Permit, in light of decisional authority including the State Water Resources Control Board's

decision in the BIA matter. (*In the Matter of the Petition of Building Industry Ass'n et al.*(2001) State Water Board Order WQ 2001-15.)

8. Numeric waste load allocations and consistent numeric effluent limitations must be utilized to assure compliance with adopted TMDLs.

We strongly object to the inclusion of language in the Draft Permit that purports to express a WLA as "a suite of BMPs that have been determined as providing a reasonable expectation that WLAs will be achieved for wet weather flows . . . ." (Draft Permit at pp. 31, 88). We further object to the fact that WLAs that describe daily limits to meet established TMDLs have not been included.

By law, WLAs, or waste load allocations, are numeric components of a TMDL. (33 U.S.C. § 1313(d) (describing TMDLs as a "load").) As an initial matter, the Draft Permit does not contain or refer to any WLA, *per se*; instead it refers to concentration-based effluent limit with no description of how this limit acts as an effective "load" limitation. (Draft Permit at pp. 88-94). As an initial matter, this violates the law. Indeed, EPA has stated that:

> WLAs and LAs are to be expressed in numeric form in the TMDL. (See 40 C.F.R. § 130.2(h) & (i).) EPA expects TMDL authorities to make separate allocations to NPDES- regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs).[77]

Moreover, the Draft Permit does not make the concentration-based WLA that is listed for each applicable TMDL a compliance requirement in wet weather. There is no legal basis in the Clean Water Act that allows effluent limits designed to meet a TMDL to be expressed in narrative terms, i.e., as non-specified BMPs. Indeed, it is elementary that a TMDL is a *number* and that its component parts must, therefore, also be numbers, since totaled, they must by law equal the TMDL. If effluent limits purportedly implementing a TMDL are not numbers less than or equal to the WLA they purport to implement, then they do not in any meaningful way serve as water-quality based effluent limits derived to meet the TMDL. The omission of such limits illegal.[78]

Rather than provide statutory or regulatory support for its approach, the Draft Permit simply refers to the EPA Permitting Guidance document (Draft Permit at p. 20) as the totality of the legal support for not having numeric limits in the Draft Permit so as to meet the WLA. But even this document requires, as prerequisites to the inclusion of non-numeric effluent limits, a set of conditions that the Draft Permit does not come close to meeting.

First, the Draft Permit does not comply with the stipulation that "when a non-numeric water quality-based effluent limit is imposed, the permit's administrative record, including the

fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL.[79]

Second, the Draft Permit does not comply with the further requirement that "[t]he NPDES permit must also specify the monitoring necessary to determine compliance with effluent limitations. (See 40 C.F.R. § 122.44(i).) Where effluent limits are specified as BMPs, the permit should also specify the monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved (e.g., BMP performance data)." (*Id.*)

Third, the Draft Permit does not comply with the requirement to "make separate aggregate allocations to NPDES-regulated storm water discharges (in the form of WLAs) and unregulated storm water (in the form of LAs)."[80]

In addition, the Draft Permit does not impose or daily limits or translate the TMDL into daily limits in the Draft Permit. This is illegal. (*Friends of the Earth, Inc. v. EPA, et al.* No. 05-5015 (D.C. Cir. 2006)).

For all of these reasons, the Draft Permit must be revised to assure that the permit implements available TMDLs in an adequate and lawful fashion.

We thank the Board Members and Board Staff for this opportunity to comment on the Draft Permit, and for your continued commitment to protecting the water resources in Ventura County.

Sincerely,

David S. Beckman, Senior Attorney
Dorothée A. Alsentzer, Legal Fellow

ENDNOTES

[1] Los Angeles Regional Water Quality Control Board, *Draft Ventura County Municipal Separate Storm Sewer System Permit*, NPDES No. CAS004002 (Dec. 27, 2007), Part 4.E (hereinafter "Draft Permit").

[2] See e.g., California Water & Land Use Partnership, *Low Impact Development: A Sensible Approach to Land Development and Stormwater Management*, available at http://www.oehha.ca.gov/ecotox/pdf/lid071106.pdf, last accessed February 17, 2007; R. Horner, *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County* (February 2007) (attached hereto as Attachment I) (hereinafter "Horner Report"); see also LID reference documents attached hereto as Attachment V and Table of Contents to those materials, attached hereto as Attachment IV.

[3] Draft Permit at p. 36.

[4] See Ventura Countywide Stormwater Quality Management Program, Annual Report for Permit Year 6, Reporting Year 12 (October 2006) at p. 10-4 (hereinafter "2005-06 Annual Report"), available at http://www.vcstormwater.org/publications.html#publications_2006annualreport.

[5] 2005-06 Annual Report at p. 9-3 (emphasis added).

[6] Draft Permit at p. 2 (emphasis added).

[7] See Draft Permit at p.2.

[8] Draft Permit at p. 36; see also Draft Permit at p. 20 (noting that MS4 programs are to "be implemented in an iterative manner and improved with each iteration by using information and experience gained during the previous permit term. . . . with the purpose of attaining water quality objectives and standards") (citing EPA, 61 Fed. Reg. 43,761 (Aug. 26, 1996); 61 Fed. Reg. 41,697); California Regional Water Quality Control Board, Los Angeles Region, Resolution No. 2005-002 (Jan. 27, 2005) ("In addition to the process outlined in this [hydromodification policy] resolution, the Regional Board has and will continue to strongly support restoration efforts in and along the Region's urbanized, highly modified water courses. The Regional Board also strongly supports preservation efforts geared toward ensuring long-term protection for the Region's remaining natural water courses.").

[9] Ventura County Storm Water NPDES Permit, Board Order No. 00-108, NPDES Permit No. CAS004002 (Aug. 3, 2000) at p. 16 (hereinafter "Order No. 00-108").

[10] Ventura County Storm Water NPDES Permit, Board Order No. 00-108, NPDES Permit No. CAS004002 (Aug. 3, 2000) at p. 16 (hereinafter "Order No. 00-108").

[11] Requirements relating to the new development and redevelopment components of the copermittees' development planning programs are addressed in sections 3 and 4.C, and 3 and 4.E, of the previous permit and Draft Permit, respectively.

[12] See 2005-06 Annual Report at p. 9-3 ("Elevated pollutant concentrations were observed at all monitoring sites during one or more monitored wet weather storm events, and at [specific monitoring sites] during one or more dry weather events.")

[13] See Draft Permit at p. 55.

[14] *Natural Resources Defense Council v. Costle* (D.C. Cir. 1977) 568 F.2d 1369, 1371.

[15] Order No. 00-108 at p. 16.

[16] While the parking lots associated with such large retail stores would likely trigger post-construction BMPs based, a project falling under more than one category would require additional source controls for each category. The added benefit of additional source controls is lost when the commercial threshold is not triggered.

[17] SQUIMP at p. A-5.

[18] See 33 U.S.C. § 1342(p)(3)(B)(iii).

[19] Draft Permit at p. 20 (citing EPA, *Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits*, 61 Fed. Reg. 43,761).

[20] See e.g., Michael Mallin, *Wading in Waste*, SCIENTIFIC AMERICAN, June 2006, at pp. 54-56; NRDC, *Stormwater Strategies: Community Responses to Runoff Pollution* (1999); NRDC, *Rooftops to Rivers: Green Strategies for Controlling Stormwater and Combined Sewer Overflows* (2006) at pp. 2.2-2.5 (hereinafter "Rooftops to Rivers") (attached hereto as Attachment II); U.S. EPA *Preliminary Data Summary of Urban Storm Water Best Management Strategies* (Aug. 1999) at p. 85.

[21] See e.g., Draft Permit at p. 3 (finding that "[d]evelopment and urbanization increase pollutant loads, volume, and discharge velocity) and pp. 4-5 (finding that "[s]tudies have demonstrated a direct correlation between the degree of imperviousness of an area and the degradation of its receiving waters. Significant declines in the biological integrity and physical habitat of streams and other receiving waters have been found to occur with as little as 3-10 percent conversion from natural to impervious surfaces.").

[22] 40 C.F.R. § 122.34(b)(5)(i) (Phase II municipalities "must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre").

[23] 64 Fed. Reg at 68,739.

[24] "[D]uring the 2000 permit term, the conversion of agricultural lands and open space to other 'developed' land uses has been ongoing and will continue." ROWD at p. 3-30.

[25] Draft Permit at pp. 3-4.

[26] See Horner Report, Tables 7-10; San Diego Municipal Stormwater Copermittees, Report of Waste Discharge (Aug. 2005) at p. 43.

[27] See e.g., State Water Resources Control Board, "Low Impact Development – Sustainable Storm Water Management," (Jan. 2005) ("LID is a sustainable practice that *benefits water supply and contributes to water quality protection*. . . . LID has been a *proven approach* in other parts of the country") (emphasis added).

[28] See Attachments IV, V (Table of Contents and Collection of LID reference materials).

[29] See Ventura Countywide Stormwater Quality Urban Impact Mitigation Plan for the Ventura County Flood Control District, the County of Ventura, and the Cities of Ventura County (July 27, 2000) (Hereinafter "SQUIMP") (citing *inter alia*, Bay Area Stormwater Management Agencies Association ("BASMAA"), *Start at the Source* (1999)).

[30] See SQUIMP at p. 6, Table 2.

[31] BASMAA, *Start at the Source* (1999) at p. 26 (emphasis added).

[32] California Regional Water Quality Control Board, Los Angeles Region, *Water Quality Control Plan Los Angeles Region (Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (1994) at p. 1-19, 1-21 (hereinafter, "Basin Plan").

[33] Prince George's County, Maryland, Dept. of Environmental Resources, *Low Impact Development Hydrologic Analysis* (July 1999), at p. 4, at http://www.epa.gov/owow /nps/lid_hydr.pdf, last accessed June 20, 2006; Devinny, J. Kamieniecki, S., Stenstrom, M., *Alternative Approaches to Stormwater Quality Control* (June 2004) at p. 42 (University of Southern California and University of California at Los Angeles study prepared for the Los Angeles Regional Water Quality Control Board).

[34] PATH, Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*, at http://www.toolbase.org/techinv/techDetails.aspx?technologyID=223, last accessed June 20, 2006; EPA, *Low Impact Development Hydrologic Analysis* (July 1999), at p. 4.

[35] PATH Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*, at 1; State of Massachusetts, *Smart Growth Toolkit*, at

http://www.mass.gov/envir/smart_growth_toolkit /pages/mod-lid.html, last accessed June 20, 2006.

[36] Devinny, J., *et al.*, *Alternative Approaches to Stormwater Quality Control* (June 2004) at p. 42.

[37] See Gary Polakovic, *Water Quest Shifts Course*, L.A. TIMES, June 11, 2006, at B.1.

[38] *Basin Plan* at p. 1-18.

[39] See Metropolitan Water District of Southern California, Water Rates and Charges, at http://www.mwdh2o.com/mwdh2o/pages/finance/finance_03.html, last accessed February 17, 2007.

[40] Table 1 adapted from R. Horner, *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County* (Feb. 2007).

[41] Puget Sound Online: Puget Sound Action Team, *Benefits of Low Impact Development*, at http://www.psat.wa.gov/Programs/LID/LID_benefits.htm, last accessed June 20, 2006; Dept. of Defense, *United Facilities Criteria: Low Impact Development* (Oct. 2004), at p. 3.

[42] Dept. of Defense, *United Facilities Criteria: Low Impact Development* (Oct. 2004), at p. 5.

[43] *See* PATH Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*; U.S. EPA, *Preliminary Data Summary of Urban Storm Water Best Management Practices* (Aug. 1999) at pp. 6-25-27; BASMAA, *Start at the Source* (1999) at p. 80.

[44] NRDC, *Rooftops to Rivers: Green Strategies for Controlling Stormwater and Combined Sewer Overflows* (April 2006) at 4.12 (attached hereto as Attachment II); see also Puget Sound Online: Puget Sound Action Team, *Benefits of Low Impact Development* ("A developer in Maryland saved 30 percent in construction costs by using LID practices rather than conventional mitigation methods. AHBL Engineering of Tacoma conducted a study that showed that a conventional residential development could have been designed at significant cost savings if LID techniques had been used rather than conventional ones."), at http://www.psat.wa.gov/Programs/LID/LID_benefits.htm, last accessed June 19, 2006.

[45] PATH Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*.

[46] Texas Water Development Board, *The Texas Manual on Rainwater Harvesting* (3d ed. 2005), at p. 36, at http://www.twdb.state.tx.us/publications/reports/RainwaterHarvestingManual_3rdedition.pdf, last accessed June 19, 2006.

[47] NRDC, *Rooftops to Rivers*, at 3.10.

[48] NEMO California Partnership, *Low Impact Development (LID)*, at http://ca-walup.usc.edu/LID_Factsheet.pdf, last accessed June 20, 2006.

[49] NAHB Research Center, *Builder's Guide to Low Impact Development*, at http://www.toolbase.org/docs/MainNav/GreenBuilding/3832_Builder-final-screen.pdf, last accessed June 20, 2006.

[50] EPA, *Low Impact Development: A Literature Review* (Oct. 2002) at p. 2, at http://www.epa.gov/nps/lid.pdf, last accessed June 20, 2006.

[51] Sam Williams, *Harvesting the Rain*, GOTHAM GAZETTE, May 2006 ("It's a win-win for the environment and for gardeners."), at http://www.gothamgazette.com/article/environment/20060531/7/1871.

[52] EPA, *Low Impact Development: A Literature Review* (Oct. 2002) at p. 3.

[53] PATH Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*; NRDC, Rooftops to Rivers, at 3.10 ("Green infrastructure also improves urban aesthetics, has been shown to increase property values, and provides wildlife habitat and recreational space for urban residents.").

[54] PATH Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*.

[55] See, e.g., PATH Technology Inventory, *Low Impact Development (LID) Practices for Storm Water Management*; Devinny, J., *et al.*, *Alternative Approaches to Stormwater Quality Control* (June 2004) at p. 43; BASMAA, *Start at the Source* (1999) at p. 80.

[56] Puget Sound Online: Puget Sound Action Team, *Benefits of Low Impact Development.*

[57] NOAA Coastal Services Center, at http://www.csc.noaa.gov/alternatives/ openSpace.html, last accessed June 20, 2006.

[58] See e.g., BASMAA, *Start at the Source* (1999) at p. 80; see generally Attachments IV, V.

[59] National Association of Home Builders Research Center, *Builder's Guide to Low Impact Development*, at http://www.toolbase.org/PDF/DesignGuides/Builder_LID.pdf, last accessed February 28, 2007.

[60] National Association of Home Builders Research Center (March 2003) at http://www.toolbase.org/Home-Building-Topics/Land-Use/low-impact-development-guides, last accessed Feb. 28, 2007.

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[61] NEMO California Partnership, *Low Impact Development (LID)* at http://www.coastal.ca.gov/nps/lid-factsheet.pdf, last accessed Feb. 28, 2007.

[62] See Draft Permit at p. 2.

[63] See Draft Permit at pp. 4-5.

[64] See Horner Report at Attachment I (describing various studies documenting observable impacts to biological integrity of receiving waters with any conversion from natural to impervious surfaces).

[65] See Draft Permit at pp. 52-53.

[66] See Horner Report at pp. 15-16.

[67] See Draft Permit at p. 56.

[68] See SQUIMP at pp. A5-A6, Tables 1, 2.

[69] See Draft Permit at p. 36 ("This Order and the provisions herein, are intended to develop, achieve, and implement a *timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP and achieve water quality objectives for the permitted areas in the County of Ventura.").*

[70] Also, federal regulations require that large and medium municipal MS4s submit, in their permit application, a "discharge characterization." (40 C.F.R. § 122.26(d)(1)(iv).) Among other things, the discharge characterization must give "[e]xisting quantitative data describing the volume and quality of discharges from the municipal storm sewer…". (*Id.*) In order to obtain this information, a permittee needs an adequate monitoring program in place.

[71] Ventura Countywide Stormwater Quality Management Program, Monitoring Program—NPDES Water Quality, at http://www.vcstormwater.org/programs_monitor_npdes_waterquality.html, last accessed March 6, 2007.

[72] Ventura Countywide Stormwater Quality Management Program, Monitoring Program—NPDES Water Quality, at http://www.vcstormwater.org/programs_monitor_npdes_waterquality.html, last accessed March 6, 2007.

[73] Ventura Countywide Stormwater Quality Management Program, 2005-2006 Annual Report, at p. 93 (Oct. 2006), at http://www.vcstormwater.org/documents/workproducts/2006annualreport/Annual_Report_2005-2006.pdf, last accessed March 6, 2007.

[74] *Id.*

[75] *Id.*

[76] Federal regulations state that, "Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators." (40 C.F.R. § 122.26 (a)(3)(vi).) Thus, unless the monitoring program enables the permittees to determine which storm system is causing or contributing to water quality violations, a situation may arise where no one would be held responsible.

[77] EPA, "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs," at 2 (2002) ("EPA Permitting Guidance").

[78] *See* EPA Permitting Guidance at 2 (citing 40 C.F.R. § 122.44(d)(1)(vii)(B)) ("NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs.").

[79] EPA Permitting Guidance at 2 (citing 40 C.F.R. §§ 124.8, 124.9 & 124.18).

[80] EPA Permitting Guidance at 3-4.

Exhibit B

April 10, 2009

Via personal delivery and electronic mail

Chair Lutz and Members of the Board
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013
VenturaMS4Comments041009@waterboards.ca.gov

Re: Comments on February 24, 2009, Tentative Order for Ventura County MS4 Permit

Dear Chair Lutz and Members of the Board:

We write on behalf of the Natural Resources Defense Council ("NRDC") and Heal the Bay. We have reviewed Tentative Order No. 09-xxx, NPDES Permit No. CAS004002—the latest draft of the Ventura County Municipal Separate Storm Sewer System NPDES Permit, released on February 24, 2009. We appreciate the opportunity to submit the following comments on the Tentative Order.

I. Introduction

NRDC and Heal the Bay are concerned that the Tentative Order weakens key requirements contained in previous drafts of the Permit without any basis articulated either in the record or otherwise. We are troubled by the circumstances of these changes, which come after a series of meetings between Regional Board staff and some stakeholders. While we believe that permit applicants, like any stakeholder, have every right to make their views known, it is incumbent on the Regional Board to ensure that pollution control language is based on more than simply the desire to accommodate these stakeholders. The Regional Board has not done so, in our view, as described below; in many instances, staff have adopted submitted redline language *verbatim* or nearly so, typographic errors and all. Without evidence in the record to support these changes, this approach is effectively a self-regulatory one that is poor public policy and legally prohibited.

II. Standards Governing the Adoption of the Tentative Order by the Regional Board

In considering the Tentative Order, the Regional Board must not only ensure compliance with substantive legal standards, but it must also ensure that it complies with well-settled standards that govern the Regional Board's administrative decision-making. The Tentative Order must be supported by evidence that justifies the Regional Board's decision to include, or not to include, specific requirements. The Regional Board would be abusing its discretion if the Tentative Order ultimately fails to contain findings that explain the reasons why certain control measures and standards have been selected and others omitted. Abuse of discretion is established if "the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Cal. Code Civ. Proc. § 1094.5(b); *see also Zuniga v. Los Angeles County Civil Serv. Comm'n* (2006) 137 Cal.App.4th 1255, 1258 (applying same statutory standard).) "Where it is claimed that the findings are not supported by the evidence, … abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence." (*Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89, 98-99.)

The administrative decision must be accompanied by findings that allow the court reviewing the order or decision to "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Ass'n for a Scenic Cmty. v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) This requirement "serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision … to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." (*Id.* at 516.) "Absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency." (*Id.* at 517 n.15.) In the case of the Tentative Order, the findings and Tentative Order Fact Sheet provide no support for the Regional Board's decision not to apply a 3% effective impervious area limitation to all regulated projects, nor any support for the Regional Board's decision to allow redevelopment projects (and other projects where onsite implementation is a concern) to comply merely with the SUSMP treatment criteria. They also do not explain or substantiate the failure to address the other issues described in this letter.

III. The Tentative Order Is Inadequate to Control Stormwater Pollution from New Development and Redevelopment and Fails to Ensure Compliance with the Maximum Extent Practicable Standard

The Tentative Order's Planning and Land Development Program section remains legally inadequate. As currently written, the Tentative Order would, as explained below, allow the implementation of relatively ineffective conventional treat-and-discharge

techniques at many development sites and is so confusingly drafted that some of its requirements are nearly impossible to discern. Moreover, it has been weakened in almost every respect from prior versions of the Permit, without any supporting documentation to demonstrate why such serial weakening is necessary. Without correction of the various problems in the Tentative Order, it cannot pass muster under the Clean Water Act.

The Planning and Land Development Program section is particularly critical for addressing the root causes of stormwater pollution, which is why we have focused significant attention in our comments here and in previous letters on these requirements. As the U.S. EPA has noted:

> Most stormwater runoff is the result of the man-made hydrologic modifications that normally accompany development. The addition of impervious surfaces, soil compaction, and tree and vegetation removal result in alterations to the movement of water through the environment. As interception, evapotranspiration, and infiltration are reduced and precipitation is converted to overland flow, these modifications affect not only the characteristics of the developed site but also the watershed in which the development is located. Stormwater has been identified as one of the leading sources of pollution for all waterbody types in the United States. Furthermore, the impacts of stormwater pollution are not static; they usually increase with more development and urbanization.[1]

A. The Standard of Practice in the U.S. Requires the Imposition of Low Impact Development Techniques Implemented with Clear Metrics for Development and Redevelopment Activities[2]

LID has been established as a *superior and practicable* strategy and, therefore, must be required. Accordingly, the United States Environmental Protection Agency has called upon Regional Boards across California to prioritize the implementation of LID, recently threatening to "consider objecting to the [San Francisco Bay region's] permit" if it does not include "additional, prescriptive requirements" for LID.[3] Along with the

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[1] U.S. Environmental Protection Agency (December 2007) *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, at v.

[2] We have advocated a 3% effective impervious area ("EIA") limitation, based on the technical work of Dr. Richard Horner. We continue to support this as the appropriate standard—however, because the Tentative Order imposes a 5% EIA limitation, we refer to the 5% standard throughout the letter.

[3] Letter from Douglas E. Eberhardt, EPA, to Dale Bowyer, San Francisco Bay Regional Water Quality Control Board (April 3, 2009), at 1.

prioritization of LID implementation, "EPA's primary objective for incorporating LID into renewed MS4 permits, especially for those that represent the third or fourth generation of permits regulating these discharges, is that the permit must include clear, measurable, enforceable provisions for implementation of LID…. [P]ermit[s] should [also] include a clearly defined, enforceable process for requiring off-site mitigation for projects where use of LID design elements is infeasible."[4] In South Orange County, EPA likewise observed that "the permit must include clear, measurable, enforceable provisions for implementation of LID…. We would not support replacing … approaches [such as EIA] with qualitative provisions that do not include measurable goals."[5]

Other government agencies in California and around the U.S. have come to the same conclusions. The California Ocean Protection Council, for instance, strongly endorsed LID last year by "resolv[ing] to promote the policy that new developments and redevelopments should be designed consistent with LID principles" because "LID is a practicable and superior approach . . . to minimize and mitigate increases in runoff and runoff pollutants and the resulting impacts on downstream uses, coastal resources and communities."[6] In Washington State, the Pollution Control Hearings Board has found that LID techniques are technologically and economically feasible and must, therefore, be required in MS4 permits.[7] The National Academy of Sciences recently issued a comprehensive report with the same recommendation for stormwater management programs: "Municipal permittees would be required under general state regulations to make [LID] techniques top priorities for implementation in approving new developments and redevelopments, to be used unless they are formally and convincingly demonstrated to be infeasible."[8]

Critically, as demonstrated in the EPA comments quoted above, the prioritization of LID practices is insufficient by itself to meet the MEP standard and *must* be paired

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[4] *Id.* at 1-2.

[5] Letter from Douglas E. Eberhardt, EPA, to Michael Adackapara, Santa Ana Regional Water Quality Control Board (February 13, 2009), at 2-3.

[6] California Ocean Protection Council (May 15, 2008) *Resolution of the California Ocean Protection Council Regarding Low Impact Development*, at 2.

[7] *Puget Soundkeeper Alliance et al. v. State of Washington, Dept. of Ecology et al.* (2008) Pollution Control Hearings Board, State of Washington, No. 07-021, 07-026, 07-027, 07-028, 07-029, 07-030, 07-037, Phase I Final, at 6, 46, 57-58.

[8] National Academy of Sciences, Committee on Reducing Stormwater Discharge Contributions to Water Pollution, National Research Council (2008) *Urban Stormwater Management in the United States*, at 500.

with a measurable requirement for the implementation of LID. Since its inception, the MS4 permitting program has been seriously hampered by a pervasive absence of numeric performance standards for the implementation of best management practices ("BMPs") such as LID. For this reason, in December 2007, the State Water Resources Control Board commissioned a report which found that "[t]he important concept across all of [the] approaches [described in the report] is that the regulations established a *performance requirement* to limit the volume of stormwater discharges."[9] The report also noted that "[m]unicipal permits have the standard of Maximum Extent Practicable (MEP) which lends itself more naturally to specifying and enforcing a level of compliance for low impact development."[10] Another study, completed for the Ocean Protection Council, recommended the following standard: "Regulated development projects shall reduce the percentage of effective impervious area to less than five percent of total project area by draining stormwater into landscaped, pervious areas."[11]

While we appreciate the fact that the Tentative Order does require some implementation of LID and includes an effective impervious area limitation, which we support in concept, its requirements have been unacceptably weakened and confused, due to the wholesale insertion into this draft of pages of language drafted by the permit applicants. The Regional Board must now reassert its regulatory role and make important revisions so as to issue a permit that meets the MEP standard and complies with the Clean Water Act.

B. The Planning and Land Development Program Section Has Been Significantly Weakened Pursuant to the Requests of the Permittees

During the last round of comments, the Permittees submitted a redline of the Permit draft.[12] Nearly every one of the Planning and Land Development Program suggestions in this document has been accommodated in the Tentative Order, with the effect of severely weakening the Permit. Staff have not just accommodated conceptual criticism, they have instead adopted *verbatim* approximately 1,000 words from the

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[9] State Water Resources Control Board (December 2007) *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption*, at 23 (emphasis added) (hereinafter "SWRCB LID Report").

[10] *Id.* at 4.

[11] Ocean Protection Council of California (January 2008) *State and Local Policies Encouraging or Requiring Low Impact Development in California*, at 27.

[12] Letter from Gerhardt Hubner, Ventura Countywide Stormwater Management Program, to Tracy Egoscue, Los Angeles Regional Water Quality Control Board (May 27, 2008), Attachment A1 ("Permittees' redline").

Permittees' redline of the Planning and Land Development Program section, rejecting only about 70 words of proposed changes.[13] These unjustified revisions have had the impact of fundamentally altering the critical LID provisions and specifically affect the following:

- The applicability of the Tentative Order's numeric performance standard for post-construction controls (5% EIA) to all projects, including redevelopment (Tentative Order ¶ 5.E.III.1(b));

- The Planning and Land Development Program section's applicability criteria, in terms of both square footage and whether only impervious surface counts toward the threshold (Tentative Order ¶ 5.E.II.1);

- Exemptions for "routine maintenance activity" (Tentative Order ¶ 5.E.II.2(b));

- The grandfather clause (Tentative Order ¶ 5.E.II.3);

- The baseline for hydromodification analysis ("pre-development" vs. "pre-project") (Tentative Order ¶ 5.E.III.2(a));

- The creation of an entirely new section that allows the Permittees to waive compliance with the hydromodification control requirements (Tentative Order ¶ 5.E.III.2(a)(2));

- The elimination of any interim hydromodification requirements for projects disturbing less than fifty acres of land (Tentative Order ¶ 5.E.III.2(a)(3)(i));

- The revision of the interim hydromodification criteria for projects over fifty acres such that meeting an Erosion Potential of 1 is no longer strictly required (Tentative Order ¶ 5.E.III.2(a)(3)(ii)); and

- The allowance for Permittees to create interim hydromodification criteria that do not have to meet any standard (Tentative Order ¶ 5.E.III.2(a)(3)(A)(4)—this section number is not consecutive and appears to be mislabeled in the Tentative Order).

The Permittees even eliminated the provisions that granted the Regional Board enforcement authority over the Planning and Land Development Program section of the

[13] *Compare* Permittees' redline ¶ 5.E *with* Tentative Order ¶ 5.E.

prior draft, and Regional Board staff accepted this deletion in whole.[14] Some of these revisions are discussed in more detail below.

The degree to which staff apparently have not critically reviewed the Permitees' submissions (despite including them in the Permit) is evidenced by the Tentative Order's incorporation of the same typographical and syntactical errors as the Permittees' redline submission—*e.g.*, "BMP pollutant *removalperformance*;"[15] "[E]ach Permittee shall require *that* during the construction of a single-family home, the following measures *to be* implemented…"[16] These facts suggest that Regional Board staff simply accepted the Permittees' revisions *verbatim* and did not read these insertions critically. The result: the Permittees have been allowed in the Tentative Order *literally* to write vast portions of their own permit. This is a serious violation of law that undermines public confidence in the Regional Board. To the extent that the apparent delegation of regulatory duties to the permit applicants is the result of an oversight or is otherwise explained, this error must be fully corrected prior to issuance of the Permit.

Further reinforcing the self-regulation problem and lack of transparency in the permit-writing process, Regional Board staff have not—in the findings, Tentative Order Fact Sheet, or Response to Comments—provided any explanation of why weakening the Permit is necessary. Indeed, the Response to Comments never mentions the numerous ways in which the Tentative Order has been enfeebled through the incorporation of the Permittees' revisions, claiming instead in the vast majority of cases: "No changes required to address this comment." (*Compare, e.g.,* Response to Comments at 29-36 *with* the many substantive changes listed above.) In contrast, where Regional Board staff implemented some NGO suggestions for certain provisions, the Response to Comments specifically acknowledges the changes made. (Response to Comments at 36.)

Taken as a whole, the LID provisions in the Permit have been significantly changed, in virtually each instance in ways that reduce environmental protection. While we discuss many of the most important issues in separate sections below, the changes affect a wide range of key requirements. For example, at the behest of the Permittees, Regional Board staff have rewritten the applicability section, as mentioned above, such that it now will fail to ensure pollution control at a large number of development and redevelopment projects. Specifically, the Tentative Order doubled the number of square feet required for many development projects to be regulated (from 5,000 to 10,000) and now requires that only impervious surface be considered in calculating whether a project

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[14] *Compare* Tentative Order 08-xxx, NPDES No. CAS004002, Third Draft Ventura County MS4 Permit ¶ 5.E.IV.3 *with* Tentative Order ¶ 5.E.IV *and* Permittees' redline at 55.

[15] Tentative Order ¶ 5.E.IV.6(a)(1) (emphasis added); Permittees' redline at 57.

[16] Tentative Order ¶ 5.E.II.1(a)(11) (emphasis added); Permittees' redline at 47.

meets the threshold. (Tentative Order ¶ 5.E.II.1.) These new criteria could hardly be construed as meeting the MEP standard since both the San Francisco Bay and North Orange County Phase I MS4 permits under consideration for adoption contain more stringent applicability criteria.[17] Additionally, the Tentative Order sets a catchall threshold of 1 acre (now with the additional requirement of at least 10,000 square feet of impervious surface), which is, arbitrarily, far higher than the catchall threshold for the San Francisco Bay permit. (Tentative Order ¶ 5.E.II.1(a)(1).) Even though NRDC mentioned this in our previous comment letter, the Response to Comments has not provided more than a cursory and unsupported explanation of staff's reasoning.

A second specific example of how wide-ranging the weakening of the Tentative Order is involves unexplained edits to the "grandfathering" provision such that all projects that have been "deemed complete for processing" or are "without vesting tentative maps" need not comply with the permit. (Tentative Order ¶ 5.E.II.3.) This is an unjustifiably weak requirement which also compares unfavorably with approaches taken by other Regional Boards. The draft San Francisco Bay regional MS4 permit, despite its many flaws, establishes a much more appropriate threshold: development projects must have received "final, major, staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulation[s]."[18] The draft North Orange County MS4 permit also surpasses the Tentative Order and requires that projects have received approval of their "Water Quality Management Plan."[19] The inadequate language adopted by staff is taken directly from the Permittees' redline.

C. The Weaker Planning and Land Development Program Requirements Are Inconsistent with Evidence in the Record and the Longstanding Position of the Regional Board

Although Regional Board staff have clarified that appropriate numeric sizing criteria must be applied to BMPs used to render impervious surfaces "ineffective," various changes in ¶ 5.E.III.1 have created considerable internal inconsistency, arbitrary distinctions between projects, and impermissibly lacking requirements for large categories of projects. These changes have weakened the Tentative Order, as discussed above, and represent a considerable shift from the prior three drafts of the permit. Of all the revisions to the Planning and Land Development Program section requested by the

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[17] Tentative Order R8-2009-0030, NPDES Permit No. CAS618030, Orange County Draft MS4 Permit, at 47-49; Tentative Order R2-2009-00XX, NPDES Permit No. CAS612008, San Francisco Bay Draft MS4 Permit, at 16-19.

[18] Tentative Order R2-2009-00XX, NPDES Permit No. CAS612008, San Francisco Bay Draft MS4 Permit, ¶ C.3.c.ii.

[19] Tentative Order R8-2009-0030, NPDES Permit No. CAS618030, Orange County Draft MS4 Permit, ¶ XII.J.

Permittees and implemented by Regional Board staff, as noted above, every single one applies to a provision that has remained essentially unchanged through three drafts of the permit, with the exception of the grandfather provision, which came into being in the second draft. (*Compare* First Draft, Second Draft, and Third Draft Ventura County MS4 Permit *with* Tentative Order.) This, combined with the apparent reassignment of the lead permit author who is a National Academy of Sciences-level expert on stormwater, highlights the extent to which the recent revisions to the permit are arbitrary and do not reflect the application of agency expertise. (*See, e.g., CBS Corp. v. F.C.C.* (3rd Cir. 2008) 535 F.3d 167, 188 (agency interpretation set aside because no reasoned basis for departure from prior policy was provided and agency conclusion, "even as an interpretation of its own policies and precedent, [was] 'counter to the evidence before the agency' and 'so implausible that it could not be ascribed to . . . product of agency expertise.'").) Unfortunately, the effect of Regional Board staff's weakening of the Tentative Order is that the many changes in the Planning and Land Development Program section are bound to lead to poorer water quality results and will not adequately address impaired waters in Ventura County, as discussed below.

1. The New Development/Redevelopment Performance Criteria Have Been Weakened So that 5% EIA Is No Longer a General *Requirement* that Is Subject to Waiver Only in Situations of Technical Infeasibility

The Tentative Order states that reducing effective impervious area to 5% or less is a "goal." (Tentative Order ¶ 5.E.III.1(b).) This creates potential uncertainty regarding whether the 5% EIA limitation is, in fact, a requirement for all regulated projects, and indeed, it appears that it is *not* such a requirement since all redevelopment projects and any other development projects for which "the 5% goal is infeasible" may simply comply with the state-law-backstop SUSMP treatment criteria. (Tentative Order ¶ 5.E.III.1(b).)[20] Regional Board staff are essentially saying that LID techniques should not apply in redevelopment areas.[21] There is, however, a wealth of technical information to demonstrate that this exemption is nonsensical and vastly over-inclusive.

[20] It bears mention that the definition of "redevelopment" is extremely broad and could encompass sites anywhere in Ventura County that have experienced any sort of development. Indeed, the only requirement to qualify as a redevelopment site is that the site must already have been "developed," a term which is not defined in the Tentative Order. (Tentative Order at 107.) This could include suburban areas, as well as downtown centers, so Regional Board staff cannot here legitimately claim to base this exemption on concepts of "smart growth" (which NRDC advocates) since the redevelopment of a suburban strip mall, for example, would do nothing to reduce vehicle miles traveled or to encourage denser development patterns.

[21] This is an especially problematic result because the Tentative Order has gutted the hydromodification section and no longer requires any hydromodification controls for

a. Technical Studies and Other National Standards for LID Implementation in Redevelopment Areas

A recent EPA report noted that "LID approaches can be used to reduce the impacts of *development and redevelopment* activities on water resources."[22] Similarly, a study completed for the State Water Board found that retention-based standards for LID implementation (like the 5% EIA limitation) are "appropriate models" for urbanized areas where most projects will involve redevelopment.[23] The study went even further in recommending LID retrofits as "a critical need" for existing development.[24] Another study analyzed one existing redevelopment site that had implemented LID, and not only was such implementation possible, but the authors found that "[t]he LID option produced a better return on initial investment, as measured by improvements to water quality, than did investments in conventional controls."[25]

The record for the Tentative Order even contains locality-specific analysis demonstrating that achieving 5% EIA is feasible for a wide range of sites in Ventura County, including a technical report by stormwater expert Dr. Richard Horner, which specifically addresses the feasibility and water quality and quantity benefits of imposing a 5% EIA limitation on development projects in Ventura County.[26] A recent study by

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projects under 50 acres, referring instead to "LID and/or source or treatment BMPs" as if they are adequate to address hydromodification. (Tentative Order ¶ 5.E.III.2(a)(3)(a)(i).) (This is a highly problematic assertion in the first place, as discussed below.) Yet, at the same time, the Tentative Order has also gutted the LID section of the permit by waiving the retention-based 5% EIA standard for all redevelopment projects. To the extent that this is not the result of an oversight, it resembles a "shell game" wherein one permit provision asserts that the required control elements exist in another section, but that section has been revised to delete the purported controls.

[22] U.S. Environmental Protection Agency (December 2007) *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, at 2.

[23] State Water Resources Control Board (December 2007) *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption*, at 22-23.

[24] *Id.* at 23.

[25] ECONorthwest (November 2007) *The Economics of Low-Impact Development: A Literature Review*, at 14.

[26] R. Horner, *Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County* (February 2007) ("Horner Report").

consultants for the Permittees also demonstrated the feasibility of implementing LID techniques in Ventura County through a water quality volume-based standard on constrained redevelopment sites.[27] The Tentative Order and its supporting documents, however, fail to provide any justification for the blanket waiver of the 5% EIA standard or any explanation for why no onsite maximization and accompanying offsite mitigation are required when a project cannot implement the 5% EIA "goal" onsite, which is effectively the recommendation of the United States Environmental Protection Agency in other similar scenarios in California:

> The permit should stipulate that use of these [LID] design elements must result in the onsite management of the total [water quality design storm] runoff… [T]he permit should be clear that the use of [any] conventional means … would not be counted in determining whether projects meet the permit's LID requirements…. The permit should include a clearly defined, enforceable process for requiring off-site mitigation for projects where use of LID design elements is infeasible.[28]

The Tentative Order's waiver, like the other loopholes in the Planning and Land Development Program section, is not only inconsistent with technical analyses, but it is also inconsistent with prior drafts of the permit, which applied the 5% EIA standard to all regulated projects, and with other standards from around the country. In the Anacostia area of Washington, D.C., all projects must retain the first inch of rainfall onsite.[29] In Philadelphia, all projects must infiltrate the first inch of rainfall.[30] West Virginia's draft MS4 permit also requires that the first inch of rainfall be retained onsite. Additionally, Anacostia and Philadelphia face redevelopment constraints arguably much more challenging than Ventura County. Nonetheless, in all three of these jurisdictions, projects cannot receive exemptions from the onsite retention requirement unless they demonstrate

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[27] Geosyntec Consultants et al., *Low Impact Development Metrics in Stormwater Permitting* (January 2009). We have also attached separately a critique of this study by Dr. Horner, as well as our February 13, 2009, comment letter addressed to the Santa Ana RWQCB, which critiques this report and highlights several significant errors in its methodology and presentation—nonetheless, the report does show that implementing LID through a volume-based standard is feasible on the three case study sites.

[28] Letter from Douglas E. Eberhardt, EPA, to Dale Bowyer, San Francisco Bay Regional Water Quality Control Board (April 3, 2009), at 2.

[29] Anacostia Waterfront Corporation (June 1, 2007) Final Environmental Standards, at 16.

[30] City of Philadelphia, Philadelphia Stormwater Regulations § 600.5; City of Philadelphia (2006) *Philadelphia Stormwater Management Guidance Manual: Version 2.0*, at 1-1, Appendix F.4.1.

infeasibility, and in such cases, the relevant regulations call for offsite mitigation or in-lieu fee payment, as discussed below. Thus, even the most constrained redevelopment sites must achieve the same overall, watershed-wide results as other projects, even if they cannot comply with the onsite retention standards. The evidence in the record, the position of EPA, and evidence from other jurisdictions all lead to the conclusion that the Tentative Order must do the same to pass legal muster.

b. Water Quality Detriments from the Tentative Order's Waiver of LID BMPs for Redevelopment Projects

From the perspective of water quality, the most problematic aspect of the Tentative Order's allowance for all redevelopment projects to implement mere SUSMP treatment is that it spurns the use of LID practices, which, as highlighted above, are superior stormwater management techniques and must be included in MS4 permits.[31] Indeed, in the new draft of the Tentative Order, there is no requirement at all for the type of BMPs that would have to be installed at projects exempted from the EIA limitation. (Tentative Order ¶¶ 5.E.III.1(b), 5.E.III.4.) If conventional BMPs are used at redevelopment sites (which would likely be the case), water quality benefits will be severely diminished. In keeping with the observations of the ECONorthwest report quoted above, Dr. Horner demonstrated in his Ventura County-based study that using CDS units, for instance, would result in pollutant loading reductions of between 0% and 46%, whereas LID techniques would create reductions mostly in the 97% to 99% range.[32] This is in addition to the ancillary water supply benefits of retaining water onsite. With evidence in the record showing the widespread applicability and feasibility of LID onsite retention practices in Ventura County specifically and around the entire U.S. generally, passing the Tentative Order as drafted would be an abuse of the Regional Board's discretion. The current draft would not reduce pollution and improve water quality to the maximum extent practicable.

Overall, the Tentative Order's "New Development/Redevelopment Performance Criteria" provisions do not establish a comprehensive, numeric performance standard—they create, instead, a massive loophole for numerous projects in Ventura County, many of which would be able to comply with the 5% EIA standard onsite but are not required to by the Tentative Order. This loophole would allow the installation of poor-performing BMPs when vastly superior BMPs are available, cost-effective, and feasible for implementation. The criteria for granting an exemption from meeting the 5% EIA limitation onsite should be strictly based on technical infeasibility and not on an overbroad, blanket exemption for the very category of projects that may encompass most

[31] *See, e.g.*, Letter from Douglas E. Eberhardt, EPA, to Dale Bowyer, San Francisco Bay Regional Water Quality Control Board (April 3, 2009).

[32] Horner Report at 12, 16.

of the development that takes place in Ventura County in coming years. The Tentative Order must be revised to specify that 3% or less EIA is a *requirement* or *design standard* (not a "goal") for *all* new development and redevelopment projects, and strict infeasibility criteria, paired with an alternative compliance/offsite mitigation requirement, must be imposed. Only in this manner will the implementation of LID, and thus the improvement of water quality, be maximized.

2. Whenever the Obligation for a Project to Meet the 5% EIA Limitation Onsite Is Waived for Infeasibility, the Project Must Be Required to Provide Offsite Mitigation for any Impacts Not Addressed Onsite.

Not only will the Tentative Order, as drafted, lead to inferior water quality results compared to those that are otherwise practicably attainable, but they will continue to allow watershed-wide degradation. By gutting the 5% EIA limitation and ignoring evidence in the record that the technically-justified requirement is 3% EIA, the Tentative Order is inconsistent with evidence that, absent such control, watershed and aquatic ecosystem health will decline. Dr. Horner explained the reasoning behind this concept in his report.[33] The flexibility and benefits of this watershed-oriented approach are apparent: even if the implementation of retention-based BMPs on a given site might not meet the 5% EIA standard, the same positive effects can be achieved through offsite mitigation and/or in-lieu fees used to construct pollution-reducing facilities elsewhere. Thus, to meet the MEP standard, the Tentative Order must be revised so that any instances of LID infeasibility on a particular site results in mitigation offsite, a result consistent with the evidence in the record and with EPA recommendations and now implemented in a wide range of permits nationally. This can be accomplished by the Permittees either through the RPAMP provision (¶ 5.E.IV.3) or through the otherwise applicable requirements of the Permit itself, such as the mitigation funding provision.

A system that allows for onsite noncompliance but requires commensurate offsite mitigation would parallel other stormwater regulations in the rest of the country. Anacostia, for instance, requires either physical offsets (at 1.5 times the volume not retained onsite) or in-lieu payments (at 2 times the cost of mitigating the volume not retained onsite).[34] The Philadephia Water Department has the discretion to accept offsite mitigation that provides water quality and/or quantity control equal to or greater than the

[33] Horner Report, Attachment A.

[34] Anacostia Waterfront Corporation (June 1, 2007) Final Environmental Standards, at 16.

onsite practices whose infeasibility has been demonstrated.[35] The West Virginia draft permit allows offsite mitigation in the same sewershed/watershed at a ratio of 1:1.5—at least 0.6 inches of the original volumetric obligation must still be retained onsite, however.[36] The same thrust guides the Tentative Order's RPAMP provision, but this requirement only comes into play if the Permittees submit and receive approval for an RPAMP.

In contrast to the standards outlined above, as currently written, the Tentative Order may allow all redevelopment projects, as well as other development projects where onsite compliance is infeasible, to avoid meeting the 5% EIA standard altogether. These provisions must be revised such that whenever a project applicant demonstrates the technical infeasibility of implementing the 5% EIA limitation onsite, the project applicant is required to implement the standard through alternative compliance measures that could take the form of offsite mitigation, in-lieu fees to pay for achieving the same retention and pollution reduction benefits in the subwatershed, or whatever else would have the watershed-wide effect of reducing EIA to 5%. The Tentative Order has already created provisions to address these various alternative compliance measures, and it already applies them to non-exempt projects. (Tentative Order ¶ 5.E.III.1(b).) Without requiring alternative compliance measures for all projects where onsite compliance is infeasible, the Tentative Order will be falling behind other parts of the country and granting unnecessary exemptions to many undeserving projects while allowing the implementation of BMPs that have been proven far less effective at pollutant removal than other available and appropriate practices.

D. The Tentative Order's Planning and Land Development Program Provisions Do Not Meet the Clean Water Act's "Maximum Extent Practicable" Standard for Stormwater Pollution Reduction

As discussed above, the Tentative Order represents in many regards a significant weakening of the requirements that previous drafts of the permit would have imposed. Now, unfortunately, the Tentative Order's provisions are far from legally adequate to meet the Clean Water Act's MEP standard, and they must be revised accordingly.

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[35] City of Philadelphia, Philadelphia Stormwater Regulations § 600.5; City of Philadelphia (2006) *Philadelphia Stormwater Management Guidance Manual: Version 2.0*, at 1-1, Appendix F.4.1.

[36] State of West Virginia (December 11, 2008) Department of Environmental Protection, Division of Water and Waste Management, Draft General National Pollution Discharge Elimination System Water Pollution Control Permit, NPDES Permit No. WV0116025 at 13-14.

1. The MEP Standard Requires that the Tentative Order Impose More Stringent Stormwater Control Measures and Performance Criteria

Section 402(p) of the Clean Water Act establishes the MEP standard as a requirement for pollution reduction in stormwater permits. "[T]he phrase 'to the maximum extent practicable' does not permit unbridled discretion. It imposes a clear duty on the agency to fulfill the statutory command to the extent that it is feasible or possible." (*Defenders of Wildlife v. Babbitt* (D.D.C. 2001) 130 F.Supp.2d 121, 131 (internal citations omitted); *Friends of Boundary Waters Wilderness v. Thomas* (8th Cir. 1995) 53 F.3d 881, 885 ("feasible" means "physically possible").) As one state hearing board held:

> [MEP] means to the fullest degree technologically feasible for the protection of water quality, except where costs are wholly disproportionate to the potential benefits…. This standard requires more of permittees than mere compliance with water quality standards or numeric effluent limitations designed to meet such standards…. The term "maximum extent practicable" in the stormwater context implies that the mitigation measures in a stormwater permit must be more than simply adopting standard practices. This definition applies particularly in areas where standard practices are already failing to protect water quality…

(*North Carolina Wildlife Fed. Central Piedmont Group of the NC Sierra Club v. N.C. Division of Water Quality* (N.C.O.A.H. October 13, 2006) 2006 WL 3890348, Conclusions of Law 21-22 (internal citations omitted).) The North Carolina board further found that the permits in question violated the MEP standard both because commenters highlighted measures that would reduce pollution more effectively than the permits' requirements and because other controls, such as infiltration measures, "would [also] reduce discharges more than the measures contained in the permits." (*Id.* at Conclusions of Law 19.)

Similarly, in Ventura County, we have demonstrated that an onsite retention standard based on the effective impervious area of a site would be a technologically feasible approach that would reduce stormwater discharges and pollution far better than conventional BMPs, which are now allowed for a large class of projects under the Tentative Order.[37] Additionally, the Tentative Order and its supporting documents have not offered concrete evidence that a single site in Ventura County could not meet the otherwise applicable 5% EIA standard or the 3% EIA standard supported by the record. The Tentative Order also has not justified the wholesale weakening of the permit's requirements in many other respects, as set forth above, to the significant detriment of water quality.

[37] Horner Report at 9-17.

2. Other Stormwater Permits and Regulatory Documents Around the Country Have Adopted Stronger, Practicable Requirements for the Implementation of Post-Construction Stormwater BMPs

The widespread implementation of other far more stringent requirements (not to mention the technical reports that we have submitted) creates a presumption that such requirements would be practicable in Ventura County. These standards do not contain wholesale waivers for redevelopment projects and require equivalent alternative compliance where onsite compliance is infeasible, as discussed in section III.C.2 of this letter, above. The decision to waive the EIA requirement for many projects in Ventura County, with contrary examples elsewhere in the U.S. and without any technical justification for doing so or any obligation to provide equivalent offsite mitigation, evidences a disregard for the MEP standard.

E. The Planning and Land Development Program Section Contains Many Provisions that Would Allow the Permittees, in Essence, to Regulate Themselves, a Result at Odds with Federal Law

Permittee self-regulation and lack of direction are well-known and acknowledged problems. As EPA recently stated, "In our review of MS4 programs across our Region, we have found that it is common for permits to rely on the development of plans to achieve certain permit objectives, rather than including prescriptive requirements in the permits…. [T]he plans often result in a reliance on qualitative provisions rather than specific measurable criteria. As a result, we have found that there is often uncertainty among both the MS4 permittees and the permitting agencies as to specific permit expectations."[38] The Tentative Order must prevent this outcome by ensuring that the Regional Board exercises meaningful review authority over the Permittees' stormwater management programs so that they meet the MEP standard and contain the requisite "specific measurable criteria" through which permit expectations can be understood and progress toward them measured. This obligation is imposed by the Clean Water Act:

> [S]torm water management programs that are designed by regulated parties must, in every instance, be subject to meaningful review by an appropriate regulating entity to ensure that each such program reduces the discharge of pollutants to the maximum extent practicable.

(*Environmental Defense Center v. EPA*, 344 F.3d 832, 856 (9th Cir. 2003; *Waterkeeper Alliance*, 399 F.3d at 501-502 (discussing importance of review of management plans for concentrated animal feeding operations).) Meaningful review must mean *ensuring* that the MS4 permits are *in fact* designed to reduce pollutants in stormwater to the MEP. (33 U.S.C. § 1342(b) (States are allowed to issue NPDES permits only where, *inter alia*, the

[38] Letter from Douglas E. Eberhardt, EPA, to Dale Bowyer, San Francisco Bay Regional Water Quality Control Board (April 3, 2009), at 2.

state permitting programs "*apply, and insure compliance with,* any applicable [effluent limitations and standards].").) Without regulatory oversight by the Regional Board to verify that the program contains the necessary specificity to meet legal requirements, the program amounts to "impermissible self-regulation." (*EDC*, 344 F.3d at 843.)

The Tentative Order has, *de facto*, created an impermissible self-regulatory system (1) by failing to define a large number of operative terms and, relatedly, (2) by allowing the permittees to develop key control requirements without public review. First, a large number of key terms and provisions that determine the level of control required by the development and redevelopment provisions are undefined and not susceptible to clear and common definition. These are not minor drafting issues but, rather, create uncertainty about the scope of the requirements, thereby allowing misunderstanding of the Tentative Order's requirements and the possibility of implementation at levels that do not meet the MEP standard:

- The Tentative Order has not defined "land-disturbing activity," yet this is a critical part of the criteria for determining when a redevelopment project is regulated.

- The Tentative Order has not defined "developed site," yet this also is a critical part of the criteria for determining when a redevelopment project is regulated.

- Provision 5.E.III.1(d) defines how to render an impervious surface "ineffective," but the methods outlined in this provision appear to conflict with Provisions 5.E.III.1(a) and (c)'s concepts of "percolation, infiltration, storage, or evapo-transpiration" and "infiltrate[ion] and stor[age] for beneficial reuse," respectively, which are the acceptable methods (as NRDC supports) for reducing EIA; indeed, there is even a conflict between Provisions 5.E.III.1(a) and (c) insofar as percolation and evapotranspiration are included in one list and not in the other.

- Provision 5.E.III.1(b) mentions that "stormwater mitigation credits" may be used to meet the 5% EIA standard, but such credits are nowhere described in the Tentative Order.

- Provision 5.E.III.1(b) also states that exempt projects must meet the surface discharge requirements of 5.E.III.4, a section that does not exist in the Tentative Order (presumably, this refers to 5.E.III.3, the SUSMP treatment sizing criteria).

- The "Mitigation Funding" provision, 5.E.IV.4, requires the creation of a "management framework" for "regional or subregional solutions to storm water pollution," but the four enumerated reasons for which such a framework is required of Permittees are never explained in the text of the Tentative

> Order, and the descriptions of these four reasons leave the reader confused as to the requirements that trigger mitigation funding. This provision—and other related provisions—should be changed to reflect the necessity for offsite mitigation or in-lieu payments whenever a project cannot meet the 5% EIA limitation onsite. The other bases for mitigation funding need clarification.

In each of these respects, there is nothing to stop a Copermittee from "misunderstanding or misrepresenting its own stormwater situation and proposing a set of minimum measures for itself that would reduce discharges by far less than the maximum extent practicable." (*EDC*, 344 F.3d at 855.)

Second, the Tentative Order has given the Permittees discretion to develop many of the critical performance standards and BMP requirements that will apply to new development and redevelopment projects. The Tentative Order, for instance, requires the Permittees to participate in the Southern California Storm Water Monitoring Coalition's Hydromodification Control Study, which will then become the hydromodification control requirements for Ventura County. (Tentative Order ¶ 5.E.III.2(a)(1)(E).) The Tentative Order also allows the Permittees to grant exemptions from hydromodification controls for a large set of projects—this section, as discussed, was in fact written by the Permittees and added to the permit in this draft. (Tentative Order ¶ 5.E.III.2(a)(2)(A).) The Tentative Order even enables the Permittees (in collaboration with project proponents, if they so wish) to develop their own interim hydromodification control requirements. (Tentative Order ¶ 5.E.III.2(a)(3)(A)(ii).)

Perhaps even more problematically, the Tentative Order does not require any Regional Board or public review *at all* of the many essential aspects of the Planning and Land Development Program section that have been left to the Permittees to determine. These aspects include: the abovementioned hydromodification provisions; the final hydromodification criteria to be developed by the Permittees (Tentative Order ¶ 5.E.III.2(a)(4)); the Mitigation Funding provisions (Tentative Order ¶ 5.E.III.4); and the Ventura County Technical Guidance Manual, which is to include "LID principles and specifications, including the objectives and specifications for integration of LID strategies" (Tentative Order ¶ 5.E.III.5).[39] These various documents and criteria are fundamentally necessary for assessing compliance with the permit, as well as the likely results of the permit's requirements. Without subjecting them to Regional Board and public review, the Tentative Order fails to meet the requirements of federal law, as described in *EDC* and *Waterkeeper*.

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[39] Notably, the only provision that does require Regional Board and public review is the RPAMP provision, which has been revised pursuant to our suggestions. We appreciate this change and hope that the Regional Board will make similar, necessary revisions to the other provisions mentioned above.

F. The Hydromodification Control Provisions Have Been Significantly Weakened in Key Respects that Fail to Protect Water Quality and Are Not Supported by Evidence in the Record

1. The Level of Protection Provided by the Hydromodification Control Criteria Has Been Weakened Arbitrarily and Is Not Scientifically or Technically Justifiable

Previously, the hydromodification control criteria established the proper, scientifically defensible "pre-development" condition as the baseline for comparison. Pursuant to the Permittees' comments, however, staff have changed this requirement to the "pre-project" condition. (Tentative Order ¶ 5.E.III.2(a).) The Tentative Order's current standard is acceptable only for new development on land that has remained in its natural state until the time of construction, but it is wholly unacceptable for infill and redevelopment projects where the land has already been developed.

Because of the prevalence of now-antiquated stormwater management practices that focused on peak flow and not on matching discharge rates and durations, *pre-project* rates and durations for infill and redevelopment sites will almost always represent measurements that we now want to avoid. Imagine, for example, the redevelopment of a 1950s-era surface parking lot: under the Tentative Order's standard, a developer could comply with the permit by doing essentially nothing to mitigate the effects of hydromodification—after all, a parking lot constructed in the 1950s would shunt all runoff directly to storm drains as rapidly as possible, resulting in the early, high peak flows that are at the root of the hydromodification problem. Nonetheless, under the Tentative Order, this unnatural hydrograph would be the standard against which the new project would be measured.

Instead of requiring projects not to exceed *pre-project* runoff rates and durations, the Tentative Order should require projects not to exceed *pre-development* runoff rates and durations. This will ensure that hydromodification criteria result in measurable progress and water quality benefits, rather than the institutionalization of detrimental, antiquated stormwater management practices. Technical experts have supported this type of standard. The Southern California Coastal Water Research Project, for instance, suggests that "attempting to have the post-development condition match *pre-development* runoff magnitude and duration should be an initial consideration for all circumstances."[40] Dr. Horner has also recommended, for other MS4 permits, the following standard:

[40] SCCWRP, *Managing Runoff to Protect Natural Streams: the Latest Developments on Investigation and Management of Hydromodification in California* (Dec. 2005), at 11 (emphasis added).

> Post-development peak flow rates and volumes shall not exceed pre-development peak flow rates and volumes for all storms from the channel-forming event to the 100-year frequency stream flow.

Los Angeles County has implemented a standard of this sort: "Mimic undeveloped stormwater and urban runoff rates and volumes in any storm event up to and including the '50-year capital design storm event.'"[41]

The Tentative Order must be revised to reflect the hydromodification control baseline that was included in previous drafts of the permit. The backsliding that has taken place is ill-advised and unacceptable from the standpoint of stream ecology and geomorphology.

2. The Hydromodification Control Criteria Section Now Waives Compliance for Most Development Projects on an Interim Basis, With No Justification

As in the discussion above, Regional Board staff have heeded the suggestions of the Permittees and substantially weakened the interim hydromodification control criteria such that they are now far from meeting the MEP standard. While previous drafts of the permit imposed hydromodification requirements on projects disturbing less than 50 acres, the Tentative Order now would exempt all projects in this very large size range from hydromodification control altogether. (Tentative Order ¶ 5.E.III.2(a)(3).) Staff's apparent reasoning is that the LID and other control requirements are considered adequate to address hydromodification impacts. (*Id.*) This is an untenable proposition. First, as discussed in previous sections, LID BMPs are no longer required in the main, since they are not required for "redevelopment" projects. The hydromodification provision's reference, then, to LID BMPs when those BMPs are not required is a significant oversight, at best.

Second, even where sites do comply with the 5% EIA standard, the LID BMPs utilized for such compliance are not intended to prevent hydromodification and will not, in fact, serve that purpose. While LID BMPs, when required by the Tentative Order, may achieve some beneficial reduction in stormwater peak flows and volumes, their purpose is reducing pollution in stormwater runoff. As Dr. Mark Gold has observed, the LID approach is designed to capture and infiltrate or reuse the runoff generated by the 85th percentile storm. This approach will have negligible impact on flows generated by the 10 year, 50 year, or 100 year storms. These larger storms cause severe erosion, sedimentation and damage to riparian and wetland ecological communities. One only has to look at the sedimentation impairment of Mugu Lagoon to see a local example of the

[41] Los Angeles County Department of Regional Planning, LID Ordinance (effective Jan. 1, 2009), amending Los Angeles County Code § 12.84.440.

need for a hydromodification provision that reduces peak flows during these large, intense storm conditions. The BMPs now relied on by the Tentative Order are simply not adequate or properly calibrated to allow complete exemptions from controlling adverse hydromodification on sites as large as 50 acres, especially since the Tentative Order, as mentioned above, does not even require many projects to meet more than the basic SUSMP treatment standards.

Nowhere else in the state are projects up to 50 acres in size exempted from hydromodification control criteria, as now proposed for Ventura County.[42] This very misguided revision in the Tentative Order must be reversed and a range of larger storms must be considered, as noted above, or else the threshold for exemption in Provision 5.E.III.2(a)(3)(A)(i) must be lowered by several orders of magnitude. Currently, the Tentative Order requires far less than MEP in this arena.

IV. The Tentative Order Fails to State Explicitly that Waste Load Allocations from Applicable TMDLs Must be Enforceable Permit Limitations

TMDLs establish WLAs—or the maximum amount of a pollutant that each point source discharger may release into a particular waterway—that constitute a form of water quality-based effluent limitation. (*See* 33 U.S.C. 1313(d)(4)(A); 40 C.F.R. § 130.2.) Once a TMDL has been adopted, NPDES permits are required to include WLAs and contain effluent limitations and conditions consistent with the assumptions and requirements of the TMDL from which they are derived. (40 C.F.R. § 122.44(d)(1)(vii)(B).)

The Tentative Order incorporates numeric WLAs for TMDLs applicable to the permittees in Part 6.V. Under Finding E.15, the Tentative Order identifies eight separate TMDLs that "have been or will be incorporated into the Basin Plan within the term of the Order." (Tentative Order finding E.15.) TMDLs currently in effect in some Ventura County waters include those for toxicity, chlorpyrifos, and diazinon, for metals and selenium, and for organochlorine pesticides, PCBs and siltation in Calleguas Creek, its tributaries, and Mugu Lagoon; for trash in Revolon Slough and Beardsley Wash; and for bacteria in harbor beaches of Ventura County. (*See* Tentative Order ¶¶ 6.V.1 through 6.V.8.)

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[42] Tentative Order No. R8-2009-0030, NPDES Permit No. CAS618030, Orange County Draft MS4 Permit, ¶ XII.D; Order No. R9-2007-0001, NPDES No. CAS0108758, San Diego County MS4 Permit, ¶ D.1.g; Tentative Order R2-2009-00XX, NPDES Permit No. CAS612008, San Francisco Bay Draft MS4 Permit, ¶ C.3.g; Tentative Order No. R9-2009-0002, NPDES No. CAS0108740, South Orange County Draft MS4 Permit, ¶ F.1.h.; Los Angeles County Department of Regional Planning, LID Ordinance (effective Jan. 1, 2009), amending Los Angeles County Code § 12.84.

While the Tentative Order repeatedly states that it "incorporates provisions to assure that Ventura County MS4 permittees comply with WLAs and other requirements of TMDLs covering impaired waters impacted by the permittees' discharges" (Tentative Order ¶ 6.I),[43] it seems to allow Permittees to "attain the storm water WLAs . . . by implementing BMPs in accordance with the MS4 effluent quality workplan and source identification approved by the Executive Officer." (Tentative Order ¶ 6.II.) This appears to be a requirement not fully consistent with the basic requirement that a permit must assure the imposition of adopted WLAs and compliance therewith as a basic and clearly stated condition of the permit.

Further, while the Regional Board may view implementation of BMPs as a means of achieving WLAs, U.S. EPA policy requires that a permit "demonstrate that the BMPs are expected to be sufficient to comply with the WLAs."[44] There is nothing in the Tentative Order or its supporting documents to demonstrate that the management practices it requires will result in compliance with the WLAs, or even that the practices were designed to do so or to address specific pollutants of concern.[45] Hence, even if the Regional Board means to require only compliance with specified management practices as a means of meeting a WLA (which we contend is a degree of separation that is flatly unlawful), it could in any case only do so based on evidence that it has not referenced and that does not exist regarding the expected control efficacy of the specifically required BMPs.

For example, the Tentative Order's implementation of the TMDL for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCBs) and Siltation for Calleguas Creek, its Tributaries, and Mugu Lagoon states only vaguely that Permittees "shall implement BMPs to achieve the interim WLAs" identified in the Tentative Order, and then requires only compliance monitoring, creation of a "Pesticide Collection

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[43] *See also*, Tentative Order finding F.2 (where adopted, "this Order requires Permittees to implement controls to achieve the WLAs within the compliance schedule provided in the TMDLs"); finding D.5 ("This Order incorporates applicable WLAs that have been adopted by the Regional Water Board and have been approved by the Office of Administrative Law and the U.S. EPA. The TMDL WLAs in the Order are expressed as water quality-based effluent limits in a manner consistent with the assumptions and requirements of the TMDL from which they are derived.")

[44] Letter from Douglas E. Eberhardt, U.S. EPA, to Dale Bowyer, San Francisco Regional Water Quality Control Board (April 3, 2009), at 6.

[45] To the extent that the Tentative Order intends to condition implementation of BMPs on meeting requirements of previously adopted TMDL workplans, the workplans are not incorporated in the Order, nor are they readily available for review on the Los Angeles Regional Board's website.

Program," and performance of a series of future studies targeted at the pollutants addressed by the TMDL. (Tentative Order ¶ 6.V.3.) The specific implementation provisions for the TMDL for Bacteria in Harbor Beaches of Ventura County require even less since, while compliance monitoring must be conducted by the permittees, "compliance with the TMDL may be either through structural and non-structural BMPs or implementation of other measures," and "[s]pecial studies are not required . . . though conducting special studies is within the discretion of the responsible parties." (Tentative Order ¶ 6.V.8.) For both TMDLs, the Permit requires only the use of further BMPs in the event that WLAs are not achieved, stating "[i]f any WLA is exceeded at a compliance monitoring site, permittees shall implement BMPs in accordance with the TMDL Technical Reports Implementation Plans or as identified in the Basin Plan Amendment." The Permit must state that compliance with the WLAs is required. (Tentative Order ¶ 6.V.3.(b)(2); ¶ 6.V.8.(b)(2).)

The U.S. EPA has noted that, "given the uncertainties in the performance of many of the BMPs commonly used for stormwater pollution control, it is often difficult to make . . . a determination" that selected BMPs will comply with WLAs.[46] The Tentative Order, in setting out a program of poorly defined requirements for TMDL implementation, does not demonstrate that BMPs to be implemented by the Permittees will achieve such compliance. Thus, the Tentative Order must be revised to state explicitly that implementation of BMPs does not in itself constitute compliance with WLAs. Effectively, the Order should "explicitly state that the wasteload allocations (WLAs) established by . . . TMDLs are intended to be enforceable permit effluent limitations and that compliance is a permit requirement."[47] The Tentative Order fails to meet this obligation, and should be revised accordingly.

V. The Tentative Order Allows the Discharge of Pollutants from New Dischargers and Sources

Approval of the Tentative Order will authorize the discharge of pollutants to impaired water bodies from "new sources" or "new dischargers" in violation of the CWA's implementing regulations. 40 C.F.R. § 122.4(i) explicitly prohibits discharges from these sources, stating that:

No permit may be issued:

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[46] Letter from Douglas E. Eberhardt, U.S. EPA, to Dale Bowyer, San Francisco Regional Water Quality Control Board (April 3, 2009), at 6.

[47] Letter from Douglas E. Eberhardt, EPA, to Michael Adackapara, Santa Ana Regional Water Quality Control Board (February 13, 2009), at 3.

> … (i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards … and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
>
> (1) There are sufficient remaining pollutant load allocations to allow for the discharge; and
>
> (2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

(40 C.F.R. § 122.4(i).) Under 40 C.F.R. § 122.2, a "new discharger" is defined as "any building, structure, facility, or installation: (a) From which there is or may be a 'discharge of pollutants;' . . . (c) Which is not a 'new source;' and (d) Which has never received a finally effective NDPES permit for discharges at that 'site.'" (40 C.F.R. § 122.2.) A "new source" is defined as "any building, structure, facility, or installation from which there is or may be a 'discharge of pollutants . . .'" that may be subject to applicable standards of performance under section 306 of the Clean Water Act. (40 C.F.R. § 122.2.) Thus, the Tentative Order may not authorize the development or redevelopment of any building or structure, including, without limitation, a new subdivision, industrial facility, or commercial structure, within the Permittees' jurisdiction, if runoff from the new discharge adds any pollutant to discharges from the MS4 that "will cause or contribute to the violation of water quality standards" for a water body impaired for that pollutant. Furthermore, the applicant for the permit must prove the availability of any exception to this provision, as set forth above.

In *Friends of Pinto Creek v. U.S. E.P.A.*, the Ninth Circuit Court of Appeals vacated an NPDES permit issued by the U.S. EPA to a new discharger on the grounds that the Permittees' "discharge of dissolved copper into a waterway that is already impaired by an excess of the copper pollutant" would violate the CWA. ((9th Cir. 2007) 504 F.3d 1007, 1011.) Citing 40 C.F.R. § 122.4(i), the court stated that "The plain language of the first sentence of the regulation is very clear that no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards." (*Id*. at 1012.) The court noted that a single exception to this rule exists where a TMDL has been performed, and the "new source can demonstrate that, under the TMDL, the plan is designed to bring the waters into compliance with applicable water quality standards." (*Id.*) Thus, where no TMDL has been completed for a specified water body and pollutant, new discharges that add pollutants that will cause or contribute to a violation of water quality standards are prohibited absolutely. Additionally, the court

in *Friends of Pinto Creek* observed that unless a TMDL explicitly provides that existing discharges into the impaired water body are "subject to *compliance schedules* designed to bring the segment into compliance with applicable water quality standards," issuance of a permit for new discharge is also prohibited under 40 C.F.R. § 122.4(i). (*Id*. at 1013.) In effect, a permit for new discharges may not be issued, even when a TMDL for the relevant pollutant exists, unless it firmly establishes that "there are sufficient remaining pollutant load allocations under existing circumstances." (*Id*. at 1012.)

For the reasons set forth, under the holding of *Friends of Pinto Creek*, the Regional Board is prohibited from approving a permit that allows new sources or dischargers of any pollutant to waterbodies already impaired by that pollutant, unless the Tentative Order demonstrates that an existing TMDL specifically provides sufficient waste load allocations for the discharge.

As of 2002, there were "in excess of 160" waterbodies that exceeded water quality standards for at least one pollutant within the jurisdiction of the Los Angeles Regional Board.[48] Many of these are located in jurisdictions and municipalities covered by the Tentative Order.[49] Water bodies within the Permittees' jurisdictions are impaired for, among other pollutants, PCBs, bacteria, nutrients, pesticides, and metals. [50] The Tentative Order acknowledges that "Municipal point source discharges of runoff from urbanized areas remain a leading cause of impairment of surface waters in California," (Tentative Order finding B.3), and under finding B.1, states that "[b]ased on the Ventura Countywide Storm Water Monitoring Program's Water Quality Monitoring Reports . . . the dry weather and wet weather Pollutants of Concern (POC) in urban stormwater include an anion, bacteria, conventional pollutants, metals, a nutrient, organic compounds, and pesticides . . . Many of the POC listed are causing impairments identified on the federal Clean Water Act (CWA) § 303(d) list of impaired waterbodies." (Tentative Order finding B.1.)[51]

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[48] Los Angeles Regional Water Quality Control Board (December 2002) Draft Strategy for Developing TMDLs and Attaining Water Quality Standards in the Los Angeles Region, at 3. http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/tmdl/02_1210_strategy%20121002.pdf.

[49] See 2006 CWA Section 303(d) List of Water Quality Limited Segments. For example, in addition to the eight TMDLs identified in the Permit for Ventura MS4 permittees, the Ventura River and Ventura River Estuary are identified as impaired for algae, Calleguas Creek is identified as impaired for fecal coliform, and the Santa Clara River is identified as impaired for toxicity, bacteria, pesticides, chlorpyrifos and diazinon.

[50] *Id*.

[51] The Permit characterizes stormwater runoff generally under finding B.2., stating that

The Tentative Order Fact Sheet further elaborates on these concerns, stating that "[t]he water quality monitoring data submitted by the Ventura MS4 Permittees (Annual Monitoring Report 04-05) reveal that a number of constituents, such as metals, PAHs, [and] pesticides exceeded the receiving water quality standards during wet events." (Tentative Order Fact Sheet at 27.) The 2008 Annual Monitoring Report for the Ventura MS4 Permittees stated that "[e]levated pollutant concentrations were observed at all monitoring sites during one or more monitored wet weather storm events," and at certain mass emission stations "during one or more dry weather events."[52] The 2008 Annual Report identified "[c]onstituent concentrations above Los Angeles Region Basin Plan, California Toxics Rule, and/or California Ocean Plan water quality objectives" for pollutants including bacteria, metals, nutrients, PAHs and other organic compounds, PCBs and pesticides. (2008 Annual Report at 9-3 – 9-5.) The 2004-2005 Annual Report demonstrated that samples from land use monitoring sites specifically "designed to characterize stormwater discharges"[53] contained the same list of pollutants.[54] The adopted Basin Plan Amendment for the Calleguas Creek Watershed Metals TMDL specifically identifies urban runoff as a "significant source[] of metals and selenium."[55]

These findings are further borne out by research that has consistently "identified stormwater runoff as a major contributor to water quality degradation in urbanizing watersheds."[56] Studies have repeatedly shown that "[s]tormwater runoff typically

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"Common pollutants in urban storm water and their respective sources are: bacteria from animal droppings and illegal discharges; Polycyclic Aromatic Hydrocarbons (PAHs) from the products of internal combustion engine operation and parking lot sealants wash off; nitrates from fertilizer application; pesticides from pest mitigating applications and from plant mitigating applications; bis (2-ethylhexyl) phthalate from the break down of plastic products; mercury from atmospheric fallout and improper disposal of mercury switches; lead from fuels, paints and automotive parts; copper from brake pad wear and roofing materials, zinc from tire wear and galvanized sheeting and fencing; sediment from land disturbance and erosion; and dioxins as products of combustion." (Tentative Order finding B.2.)

[52] 2008 Annual Report at 9-3.

[53] 2008 Water Quality Monitoring Report at 2.

[54] 2004-2005 Annual Report at 9-5 – 9-6.

[55] Calleguas Metals TMDL at 4.

[56] Earl Shaver et al. (2007) *Fundamentals of Urban Runoff Management: Technical and Institutional Issues*, North American Lake Management Society, at 3-46.

contains dozens of pollutants that are detectable at some concentration," including "sediment, nutrients, metals, hydrocarbons, bacteria and pathogens, organic carbon, MTBE, pesticides, and deicers."[57] In particular, studies show that "zinc, copper and cadmium pollution [were] found in urban runoff;"[58] that "[m]icrobial pollution" such as bacteria, protozoa, and viruses "is almost always found in stormwater runoff;"[59] that "cars and other vehicles contributed 75 percent of the total copper load to the lower San Francisco Bay through runoff;"[60] and that "insecticides such as diazinon and malathion were commonly found in surface water and stormwater in urban areas … with urban runoff being the primary transport mechanism into urban streams."[61]

New discharges will only increase the mass of these pollutants entering impaired receiving waters. In fact, the Tentative Order explicitly acknowledges that "[d]evelopment and urbanization increase pollutant loads," and that "urban development creates new pollution sources as the increased density of human population brings proportionately higher levels of vehicle emissions, vehicle maintenance wastes, municipal sewage waste, pesticides, household hazardous wastes, pet wastes, trash, and other anthropogenic pollutants." (Tentative Order finding B.16.) These conclusions are echoed by the U.S. EPA, which states that "the impacts of stormwater pollution are not static; they usually increase with more development and urbanization."[62]

There are water bodies in Ventura County identified by the Regional Board and U.S. EPA as impaired by pollutants including bacteria, nutrients, pesticides, PCBs and selenium, for which no TMDL has been adopted. Any new discharge of these pollutants to such a water body resulting from increased urbanization would violate the terms of 40 C.F.R. § 122.4(i) and the court's holding in *Friends of Pinto Creek*. Such discharges must be prohibited.

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[57] Center for Watershed Protection (March 2003) *Impacts of Impervious Cover on Aquatic Systems*, at 55.

[58] Earl Shaver et al. (2007) *Fundamentals of Urban Runoff Management: Technical and Institutional Issues*, North American Lake Management Society, at 3-48.

[59] *Id*. at 3-49.

[60] NRDC, *Stormwater Strategies: Community Responses to Runoff Pollution*, at Chapter 2, *available at* http://www.nrdc.org/water/pollution/storm/stoinx.asp.

[61] Earl Shaver et al. (2007) *Fundamentals of Urban Runoff Management: Technical and Institutional Issues*, North American Lake Management Society, at 3-54.

[62] U.S. Environmental Protection Agency (December 2007) *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, at v.

Even where TMDLs have been adopted and are in effect for the Ventura MS4 Permittees, following the court's holding in *Friends of Pinto Creek*, a permit allowing new dischargers or sources of pollutants could be approved and issued only in the event that the applicable TMDL explicitly establishes that (1) existing discharges into the impaired water body are "subject to *compliance schedules* designed to bring the segment into compliance with applicable water quality standards," and (2) additional allocations are available for the specified water body. (*Friends of Pinto Creek*, 504 F.3d at 1013.) As the Tentative Order identifies, eight individual TMDLs "have been or will be incorporated into the Basin Plan within the term of the Order," including TMDLs for toxicity, chlorpyrifos, and diazinon, for metals and selenium, and for organochlorine pesticides, PCBs and siltation in Calleguas Creek, its tributaries, and Mugu Lagoon; for trash in Revolon Slough and Beardsley Wash; and for bacteria in harbor beaches of Ventura County. (*See* Tentative Order ¶¶ 6.V.1 through 6.V.8) However, the Tentative Order does not establish that additional allocations for pollutants addressed by these TMDLs exist and are available. As a result, new discharges to a waterbody impaired for these pollutants, or for any other contaminant for which a TMDL has been established, are prohibited and there is no authority for the Regional Board to issue the Tentative Order. In order to be lawful, the Tentative Order must establish measures to ensure that stormwater discharges, from existing or future sources, do not cause or contribute to such impairments, and the Tentative Order has not done so.

We stress that these concerns highlight the problems created by the Regional Board's weakening of key provisions of the Tentative Order pertaining to implementation of controls on stormwater. In order to ensure compliance with WLAs established by applicable TMDLs, the Tentative Order must require LID techniques to be implemented with clear performance metrics for both new development and redevelopment, including the imposition of a 3% EIA standard. The Tentative Order must further place strict limitations on the use of waivers or alternative compliance measures for addressing stormwater control. Mandating the proper implementation of LID practices is a critical means of ensuring that runoff from new sources or dischargers will not contribute additional pollutants to an impaired waterbody, and the Tentative Order must be revised to ensure that these practices are not rendered ineffectual.

VI. The Tentative Order Fails to Include Provisions that Effectively Prohibit all Non-Stormwater Discharges, as Required by the Clean Water Act

A. The Tentative Order Is Inconsistent with the Clean Water Act and Regulations

Federal law requires that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." (33 U.S.C. § 1342(p)(3)(B)(ii).) However, the Tentative Order and Tentative Order Fact Sheet state that "the federal regulations . . . included a list of specific non-storm water discharges that 'need not be prohibited.'" (Tentative Order Fact Sheet at 15.) This exception violates

the clear language of the CWA and its implementing regulations. Section 402(p)(3)(B)(ii) of the CWA requires that permits for discharge from municipal sewers "effectively prohibit non-stormwater discharges," 33 U.S.C. § 1342(p)(3)(B)(ii), and does not create any authorization for exemption of such discharges.

The Tentative Order states that "[t]he Permittees shall, within their respective juridictions, effectively prohibit non-storm discharges into the MS4 and watercourses, except where such discharges . . . (b) Are covered by a separate individual or general NPDES permit, or conditional waiver for irrigated lands; or (c) Fall within one of the categories [identified in the Tentative Order], are not a source of pollutants that exceed water quality standards, and meet all conditions where specified by the Regional Water Board Executive Officer." (Tentative Order ¶ 1.A.1.) However, section 402(p) places a clear, mandatory duty on the Permittee to prohibit non-stormwater discharges to the MS4 system. The Permittee, or Regional Board, has no discretion to deviate from this requirement. In ascertaining the meaning of a statute, construction must begin with the text. (*Duncan v. Walker* (2001) 533 U.S. 167, 172.) "If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) There is no ambiguity present in the CWA's requirement that a permit "effectively prohibit nonstormwater discharges," and the Tentative Order's provision of categorical exceptions stands in clear violation of its terms.

Further, the Tentative Order's attempt to allow exemptions from the prohibition against non-stormwater discharges to MS4 systems is not supported by the CWA's implementing regulations under 40 C.F.R. § 122.26(d)(2)(iv)(B)(1), as the Tentative Order Fact Sheet implies. This provision states the circumstances under which the Permittee must specifically design a program to prevent certain illicit discharges: "the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States." The cited regulation, providing for an enforcement program to "prevent illicit discharges," does not support the construction, seemingly implemented by the Tentative Order, that such non-stormwater discharges "need not be prohibited." (Tentative Order Fact Sheet at 15.) Even if the regulations did allow some conditional exemption, they do not provide that non-stormwater discharges are permissible when they fall into a specified category and "are not a source of pollutants *that exceed water quality standards*." (Tentative Order ¶ 1.A.1(c) (emphasis added).) The regulations explicitly state that the identified non-stormwater discharges "shall be addressed where such discharges are identified by the municipality *as sources of pollutants to waters of the United States*" in any quantity, whether or not they result in the exceedence of water quality standards. (40 C.F.R. 122.26(d)(2)(iv)(B)(1).)

Indeed, the interpretation adopted in the Tentative Order, allowing for categorical exemptions for non-stormwater discharges, is not found in the plain language of the regulation, and both the Tentative Order and staff's gloss place the regulations in direct

conflict with the overlying statute. As written, the entire scheme in the Tentative Order is inconsistent with both the regulations and the statute that they purport to implement.

B. The Tentative Order Is Also Inconsistent with Facts in the Record

Even if the Tentative Order's non-stormwater scheme were conceptually lawful, the exemptions provided are unsupportable because they contradict facts in the record evidencing the pernicious water quality impacts of some of the exempted discharges and fail to impose controls adequate to ameliorate those impacts. Of particular concern is the Tentative Order's exemption of "reclaimed and potable landscape irrigation runoff" even though pollutants from theses sources are a known, significant source of impairment to waters in the Ventura region. A finding that these discharges are "not []sources of pollutants to receiving waters," as required under 40 C.F.R. 122.26(d)(2)(iv)(B)(1), simply has not been and cannot be made here, as it would be inconsistent with facts in the record.

First, "a non-source of pollutants" finding would stand contrary to extensive research that has proved the opposite: studies have consistently shown that non-stormwater discharges from irrigation water or lawn water are a significant source of pollutants for which Ventura area waters are impaired. As the Calleguas Creek OC Pesticides & PCBs TMDL duly notes, "[u]rban runoff" is a "source[] of OC pesticides."[63] Though many of the listed pesticides have been banned, urban growth and use still remain a source of pesticide pollution and related toxicity. Further, garden use has been identified generally as one of the main sources of pesticides found in urban streams.[64] Lawns have further been identified as a "hot spot" for nutrient contamination in urban watersheds—lawns "contribute greater concentrations of Total N, Total P and dissolved phosphorus than other urban source areas … source research suggests that nutrient concentrations in lawn runoff can be as much as four times greater than other urban sources such as streets, rooftops or driveways."[65] Thus, any claim that irrigation water is unequivocally not a source of pollutants to receiving waters cannot be sustained, and this exemption should be removed from the Tentative Order.

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[63] Calleguas Creek Pesticides TMDL, at 4.

[64] Earl Shaver et al. (2007) *Fundamentals of Urban Runoff Management: Technical and Institutional Issues,* North American Lake Management Society, at 3-54.

[65] Center for Watershed Protection (March 2003) *Impacts of Impervious Cover on Aquatic Systems* at 69; *See also*, H.S. Garn (2002) *Effects of lawn fertilizer on nutrient concentration in runoff from lakeshore lawns, Lauderdale Lakes, Wisconsin.* U.S. Geological Survey Water-Resources Investigations Report 02-4130. In an investigation of runoff from lawns in Wisconsin, runoff from fertilized lawns contained elevated concentrations of phosphorous and dissolved phosphorous.

Second, to the extent that the Tentative Order purports to allow the implementation of BMPs as a means of authorizing the conditional exemption of potentially, or in fact actually, polluted irrigation water,[66] there has been no showing that the BMPs required by the Tentative Order under Part 1.A., Table 1, are sufficient to meet the regulatory requirements of the CWA. The requirements of this section, such as the requirement that Permittees "[i]mplement conservation programs to minimize this type of discharge by using less water" (Tentative Order, ¶ 1.A., Table 1), are vague and fail to set out any measurable requirement, further underscoring that these provisions are not tantamount to actions that will result in non-stormwater irrigation flows free of pollutants as required under 40 C.F.R. § 122.26(d). Indeed, they echo proposals that have been introduced in previous permits throughout California and that have been tried—and failed—to prevent impacts to receiving waters from irrigation runoff.[67]

In total, the Tentative Order's approach does not uphold the CWA's mandate that Permittees "effectively prohibit non-stormwater discharges into the storm sewers." (33 U.S.C. § 1342(p)(3)(B)(ii).) Given the overwhelming evidence that pollution from pesticides, nutrients, and other contaminants constitutes a serious and ongoing problem in receiving waters under the jurisdiction of the Permittees, the conditional exemption of irrigation or lawn watering from prohibitions against non-stormwater discharge violates the clear requirements of the CWA and its implementing regulations. As with our comments in Section III, we underscore that these concerns emphasize the need for LID-based, onsite stormwater retention requirements, since these approaches will reduce non-stormwater runoff from new development to zero when properly implemented.

VII. The Permit Application Is Incomplete for Failure to Include an Assessment of Controls

A permit application for discharge from a large- or medium-sized MS4 must contain an assessment of controls, including "[e]stimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management

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[66] The Tentative Order states that it "incorporates BMPs to ensure that authorized Non-Storm Water Discharges are not a source of pollutants to the MS4." (Tentative Order finding F.18.)

[67] Order No. 00-108, NPDES Permit No. CAS004002, Ventura County MS4 Permit; *see also*, Letter from Douglas E. Eberhardt, U.S. EPA, to Dale Bowyer, San Francisco Regional Water Quality Control Board (April 3, 2009), at 6 (EPA has recently acknowledged that there are significant "uncertainties in the performance of many of the BMPs commonly used for stormwater pollution control," which make it difficult to determine that BMPs will achieve compliance with WLAs or other standards.)

program." (40 C.F.R. § 122.26(d)(2)(v).) While the Permit explicitly states that "[t]he Regional Water Board has prepared this Order so that implementation of provisions contained in this Order by Permittees will meet the requirements of the federal NPDES regulations at 40 CFR 122.26," (Tentative Order finding C.4.), neither the application, the Tentative Order, the Tentative Order Fact Sheet, nor other supporting documents include any required information or other discussion of the amount of pollution that will be reduced through its controls. The approval of the Tentative Order without this information fundamentally violates basic precepts of administrative procedure, not only because required evidence in the record is lacking, but also because the findings and related subfindings in the record are therefore devoid of necessary guideposts as to why and how provisions were included or rejected. The Tentative Order does not provide sufficient evidence to demonstrate that the management practices included in the Tentative Order are adequate to meet relevant requirements and water quality standards.

The U.S. EPA has previously released guidance purporting to "allow[] permitting authorities to develop flexible reapplication requirements that are site-specific." (61 F.R. 41698.) However, nothing in the CWA's implementing regulations permits such flexibility, and this or other guidance cannot reduce or remove the regulatory requirement that the Tentative Order include estimated reductions in pollutant loadings. It is axiomatic that where agency guidance is inconsistent with an unambiguous statutory scheme or its enabling regulations, the regulations must govern. (*See, e.g.*, *Christensen v. Harris County* (2000) 529 U.S. 576, 588 ("To defer to the agency's position would be to permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation"); *Davis v. Florida Power & Light Co.* (11th Cir. 2000) 205 F.3d 1301, 1307 (rejecting agency policy guidance as inconsistent with its overlying statutory scheme).) In order for the Tentative Order application to meet the requirements of the CWA, the Tentative Order must include an estimate of the pollutant load reduction that it is expected to achieve.

Even if the guidance were not in direct conflict with the regulations, the guidance does not in itself specifically exempt permits from including this information. The guidance states that "as a practical matter, *most* first-time permit application requirements are unnecessary for purposes of second round MS4 permit application;" it does not state that all such information is unconditionally unnecessary. (61 F.R. 41698 (emphasis added).) The omitted pollutant reduction estimates represent a fundamentally different type of information from that required by *most* of the other provisions of 40 C.F.R. § 122.26(d)(2), such as identifying already identified "major outfalls," for which repeating the exercise "would be needlessly redundant," especially "where it has already been provided and has not changed." (61 F.R. 41698.) Instead, the required pollutant load reduction estimates are self-evidently relevant to crafting and assessing the core requirements of the new permit. Such estimates are an essential means of determining whether or not the permit will ensure that water quality standards will be met and what improvements can be expected; they are not merely an administrative detail that has no effect on the permit's functionality. Tellingly, these estimates are not found in the Report

of Waste Discharge cited to in the Tentative Order as "partially complete" in their application process "under the reapplication policy for MS4s issued by the United States Environmental Protection Agency . . . (61 Fed. Reg. 41697)." (Tentative Order findings C.3-4.)

The missing information is further indispensable when, as here, the Tentative Order and the provisions included in it represent not only a substantial change from the previously adopted permit,[68] but also a substantially weakened version in comparison to prior drafts of the current Tentative Order. Given changes from both the prior Permit and prior drafts of this Tentative Order, the necessity of basing the Tentative Order on information about its estimated efficacy should be clear. The Tentative Order and application must be revised to include the required estimates.

XIII. Conclusion

For the many aforementioned reasons, the Tentative Order fails to meet the Clean Water Act's requirements and needs revision. We urge the Regional Board to improve the Tentative Order and provide staff with clear direction on the numerous modifications that are necessary, as discussed above.

Sincerely,

David S. Beckman
Bart Lounsbury
Noah Garrison
Natural Resources Defense Council

Mark Gold
Kirsten James
Heal the Bay

[68] Order No. 00-108, NPDES Permit No. CAS004002, Ventura County MS4 Permit.

Exhibit C

Table of Contents

Category	Author/Agency/Organization	Title	Date of Publication	Uniform Resource Locator (URL)
Benefits of LID	Anacostia River Business Coalition Update	Rain Gardens: Beautifying your Business and Helping the Anacostia	Spring 2003	http://www.potomacriver.org/arbc/newsletters/newsletterspring03.pdf
Benefits of LID	Blankenship, K.	It's a Hard Road Ahead for Meeting New Sprawl Goal: States Will Try to Control Growth of Impervious	2004	http://www.bayjournal.com/article.cfm?article=66
Benefits of LID	Center for Watershed Protection	Stormwater Management 101: Past, Present, and Future	04/06	http://www.rockvillemd.gov/government/commissions/ec/documents/Stormwater_101_CWP.pdf
Benefits of LID	Center for Watershed Protection	Redevelopment Roundtable Consensus Agreement	10/01	http://www.cwp.org/smartsites.pdf
Benefits of LID	Center for Watershed Protection (Stormwater Manager's Resource Center)	Model Post-Construction Stormwater Runoff Control Ordinance		http://www.stormwatercenter.net/Model%20Ordinances/Post%20Construction%20Stormwater%20Management/Final%20Model%20Stormwater%20Control.htm
Benefits of LID	Conservation Research Institute	Changing Cost Perceptions: An Analysis of Conservation Development	02/05	http://www.nipc.org/environment/sustainable/conservationdesign/cost_analysis/Cost%20Analysis%20Report.pdf
Benefits of LID	Guillette, A.	Low Impact Development Technologies	05/18/06	http://www.wbdg.org/design/lidtech.php
Benefits of LID	Guillette, A.	Achieving Sustainable Site Design Through Low Impact Development Practices	05/18/06	http://www.wbdg.org/design/lidsitedesign.php
Benefits of LID	Jones, D.	Low Impact Development	11/98	http://www.ncsu.edu/wrri/conference/2006ac/pdf/Jones_LID-1.pdf
Benefits of LID	Local Government Commission	The Ahwahnee Principles for Resource Efficient Land Use	2005	http://www.lgc.org/ahwahnee/h2o_principles_print.html
Benefits of LID	Local Government Commission	Urban Stormwater Management		http://www.lgc.org/freepub/PDF/water/water_stormwater.pdf
Benefits of LID	Mallin, M.	Wading in Waste	06/06	http://www.sciam.com/article.cfm?chanID=sa006&colID=1&articleID=0003B364-B58B-146C-B2F983414B7F0000
Benefits of LID	Metro Nature in Neighborhoods (Portland, Oregon)	Green from the Ground Up	10/06	http://www.metro-region.org/library_docs/nature/06376_building_design.pdf
Benefits of LID	Natural Resources Defense Council	Stormwater Strategies: Community Responses to Runoff Pollution	5/99	http://www.nrdc.org/water/pollution/storm/stoinx.asp
Benefits of LID	Natural Resources Defense Council	Rooftops to Rivers: Green Strategies for Controlling Stormwater and Combined Sewer Overflows	06/06	http://www.nrdc.org/water/pollution/rooftops/rooftops.pdf
Benefits of LID	NEMO	Low Impact Development (LID): A sensible approach to land development and stormwater management		http://www.coastal.ca.gov/nps/lid-factsheet.pdf
Benefits of LID	Puget Sound Action Team	Low Impact Development Local Regulation Assistance Project 2005	2005	http://www.psat.wa.gov/Programs/LID/assistance/LID_assistance.htm
Benefits of LID	Puget Sound Action Team	Natural Approaches to Stormwater Management: Low Impact Development in Puget Sound	03/03	http://www.psat.wa.gov/Publications/LID_studies/lid_natural_approaches.pdf
Benefits of LID	The Low Impact Development Center, Inc.	Low Impact Development for Big Box Retailers	11/05	http://lowimpactdevelopment.org/bigbox/lid%20articles/bigbox_final_doc.pdf
Benefits of LID	The South Whidbey Record	Langley Proposes New Rules for Homes	10/22/05	http://www.psat.wa.gov/Programs/LID/south_whidbey_record102205.pdf
Benefits of LID	Watershed Protection Techniques	Housing Density and Urban Land Use as Indicators of Stream Quality	01/00	
California-Specific Reports	American Planning Association	California Smart Growth Advocate Receives National Planning Award	01/07/05	http://www.planning.org/newsreleases/2005/ftp0107053.htm

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Category	Author/Agency/Organization	Title	Date of Publication	Uniform Resource Locator (URL)
California-Specific Reports	Chralowicz, D., *et al.*	Infiltration of Urban Stormwater Runoff to Recharge Groundwater Used for Drinking Water: A Study of the San Fernando Valley, California	6/01	www.bren.ucsb.edu/research/FinalDocs/2001/Stormwater-Final.pdf
California-Specific Reports	California State Water Resources Control Board	Low Impact Development – Sustainable Water Management	01/20/05	http://www.waterboards.ca.gov/lid/index.html
California-Specific Reports	Devinny, J.S., *et al* .	Alternative Approaches to Stormwater Quality Control	06/04	http://www.usc.edu/dept/geography/ESPE/documents/publication_stormwater.pdf
California-Specific Reports	International Building Council	Building Valuation Data	2003	http://www.nfic.org/exes_pdfs_downloads/Downloads/ICBO%20Bldg%20Valuation%20Table.pdf
California-Specific Reports	Metropolitan Water District of Southern California	2007 Rates and Charges Fact Sheets	2005	http://www.mwdh2o.com/mwdh2o/pages/finance/finance_03.html
California-Specific Reports	Metropolitan Water District of Southern California	Water to be Limited in South Ventura County While Regional Treatment Plant, Large Pipeline Are Shut Down	01/11/2007	http://www.mwdh2o.com/mwdh2o/pages/news/press_releases/2007-01/shutdown.htm
California-Specific Reports	Polakovic, G. (L.A. Times)	Water Quest Shifts Course	06/11/06	http://www.topix.net/content/trb/027155642416035709541424845553428482039 9
California-Specific Reports	Robertus, J., Executive Officer San Diego RWQCB	Stormwater Treatment Options	01/05	
California-Specific Reports	Robertus, J., Executive Officer San Diego RWQCB	Water Quality Regulatory Dynamics of Development	01/06	
California-Specific Reports	RWQCB, Los Angeles Region	The Role of Municipal Operators in Controlling the Discharge of Pollutants in Storm Water Runoff from Industrial/Commercial Facilities	11/01	http://www.swrcb.ca.gov/rwqcb4/html/programs/stormwater/la_ms4_tentative/ACaseForInspections.pdf
California-Specific Reports	Ventura County Waterworks District No. 17	Annual Water Quality Report	2004	http://publicworks.countyofventura.org/wre/wss/wss_pdf/CA_Ventura17_web%20JB.pdf
Case Study: Chicago, IL	City of Chicago	City Launches Green Roof Grants Program	11/02/05	http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?BV_SessionID=@@@@0664391742.1150324275@@@@&BV_EngineID=cccdaddidejikmgcefecelldffhdfgm.0&contentOID=536932287&contenTypeName=COC_EDITORIAL&topChannelName=HomePage
Case Study: Davis, CA	Architecture Week	A Better Suburbia	01/05	http://www.architectureweek.com/2005/0119/building_1-1.html
Case Study: Davis, CA	Rocky Mountain Institute	Village Homes, Davis, California		http://www.rmi.org/sitepages/pid209.php
Case Study: EPA Headquarters, Washington DC	EPA	Stormwater Management at the EPA Headquarters Office Complex		http://www.epa.gov/owow/nps/lid/stormwater_hq/
Case Study: Jordan Cove, CT	Clausen, J. et al.	Jordan Cove Urban Watershed Section 319 National Monitoring Program Project	02/06	http://www5.bae.ncsu.edu/programs/extension/wqg/issues/notes120.pdf
Case Study: Jordan Cove, CT	Connecticut Department of Environmental Protection	After 10 Years – Officials Celebrate Results of Important Water Monitoring Project	10/19/05	http://dep.state.ct.us/whatshap/Press/2005/101905.htm
Case Study: Jordan Cove, CT	Connecticut Department of Environmental Protection	Jordan Cove Urban Monitoring Project	10/02	http://dep.state.ct.us/wtr/nps/succstor/jordncve.pdf
Case Study: Jordan Cove, CT	National Oceanographic and Atmospheric Administration / Coastal Services	Storm Water Management: Putting Real Life to the Test in Connecticut	01-02/04	http://www.csc.noaa.gov/magazine/2004/01/conn.html
Case Study: Maryland	Maryland Department of the Environment	Controlling Stormwater: Some Lessons From The Maryland Experience	10/90	

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Case Study: Maryland and Florida	EPA	Bioretention Applications: Inglewood Demonstration Project, Largo, Maryland and Florida Aquarium, Tampa, Florida	10/00	www.epa.gov/owow/nps/bioretention.pdf
Case Study: Michigan	PILGRIM Education Fund	Waterways at Risk: How Low-Impact Development Can Reduce Runoff Pollution in Michigan	2005	
Case Study: Milwaukee, WI	STORMWATER, The Journal for Surface Water Quality Professionals	Beyond Flood Control: From green roofs to pervious pavement to underground treatment, Milwaukee experiments with newer water-quality and flood control measures	03-04/04	http://www.forester.net/sw_0403_beyond.html
Case Study: Outer Banks, North Carolina	Blue: Land, Water, Infrastructure	An Assessment of Outer Banks Coastal Environmental Conditions, Existing Stormwater Management Strategies, and the Local and State Regulatory Context to Help Local Communities Effectively Implement Low Impact Development	06/06	
Case Study: Philadelphia, PA	Abrams, Glen J.	New Thinking in an Old City: Philadelphia's Movement Toward Low-Impact Development	02/04	http://www5.bae.ncsu.edu/programs/extension/wqg/issues/notes112.pdf
Case Study: Philadelphia, PA	EPA	Vegetated Roof Cover: Philadelphia, Pennsylvania	10/00	www.epa.gov/owow/nps/roofcover.pdf
Case Study: Portland, OR	City of Portland Bureau of Environmental Services	Downspout Disconnection Program Hits the Billion Gallon Mark	06/14/05	http://www.portlandonline.com/bes/index.cfm?a=82190&c=37621#disco
Case Study: Prince George's County, MD	Cheng, M., *et al*.	Hydrological Responses from Low Impact Development Comparing with Conventional Development	11/00	http://www.scdhec.net/water/lid/pdf/somerset.pdf
Case Study: Seattle, WA	Levitt, J., and Bergan, L.	Using Nature's Plumbing to Restore Aquatic Ecosystems: The City of Seattle's Natural Drainage System	02/05	http://www5.bae.ncsu.edu/programs/extension/wqg/issues/notes116.pdf
Case Study: Seattle, WA	Horner, R., *et al*.	Hydrologic Monitoring of the Seattle Ultra-Urban Stormwater Management Projects: Summaray of the 2000-2003 Water Years	10/04	
Case Study: Seattle, WA	Seattle Public Utilities	Natural Drainage Projects		http://www.seattle.gov/util/About_SPU/Drainage_&_Sewer_System/Natural_Drainage_Systems/Natural_Drainage_Overview/index.asp
Case Study: Sun Prairie, WI	Dorava, J., Vierbicher Associates, Inc.	Enhancing Storm Water Infiltration to Reduce Water Temperature Downstream		http://www.epa.gov/owow/nps/natlstormwater03/08Dorava.pdf
Case Study: Vancouver, WA	The City of Vancouver	Crown Street: Vancouver's First Environmentally Sustainable Street	03/30/05	http://www.tac-atc.ca/english/pdf/conf2005/s5/kauffman.pdf
Case Study: Washington, DC	Natural Resources Defense Council	Out of the Gutter: Reducing Polluted Runoff in the District of Columbia	07/02	http://www.nrdc.org/water/pollution/gutter/gutter.pdf
Case Study: Various	Sierra Club	Building Better: A Guide to America's Best New Development Projects	11/05	http://www.sierraclub.org/sprawl/report05/buildingbetter.pdf
Case Study: Various	Sierra Club	Building Better II: A Guide to America's Best New Development Projects, *Clean Water Edition*	11/06	http://www.sierraclub.org/healthycommunities/buildingbetter/2006/report.pdf
Government Sources	Buzzards Bay National Estuary Program	Action Plan 2: Managing Stormwater Runoff	8/22/06 (draft)	http://www.buzzardsbay.org/newccmp-stormwater.htm; http://www.buzzardsbay.org/newccmp/bb-stormwater8-22-06.pdf
Government Sources	Buzzards Bay National Estuary Program	Action Plan 3: Promoting Low Impact Development	10/23/06 (draft)	http://www.buzzardsbay.org/newccmp-lid.htm; http://www.buzzardsbay.org/newccmp/bb-lid-10-23-06.pdf

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Category	Author/Agency/Organization	Title	Date of Publication	Uniform Resource Locator (URL)
Government Sources	Cantú, Celeste, Executive Director, California Water Boards	Building Livable, Sustainable Communities: Water Quality and Supply is Linked to Growth	04/05/06	http://www.swrcb.ca.gov/agendas/2006/april/0405_01pres.pdf
Government Sources	City of Union City, California	Green Building and Landscaping Practices in Private Development Projects Standards Policy Statement	3/14/2006	http://www.unioncity.org/commdev/comdev.pdf2/Bay-Friendly%20Landscaping%20Policy%20Statement.pdf
Government Sources	Department of Defense	Unified Facilities Criteria: Low Impact Development	10/25/04	http://www.wbdg.org/ccb/DOD/UFC/ufc_3_210_10.pdf
Government Sources	EPA	Potential Groundwater Contamination from Intentional and Nonintentional Stormwater Infiltration	05/94	http://www.p2pays.org/ref/07/06744.pdf
Government Sources	EPA	Preliminary Data Summary of Urban Storm Water Best Management Practices	08/99	http://www.epa.gov/OST/stormwater/
Government Sources	EPA	Field Evaluation of Permeable Pavements for Stormwater Management	10/00	http://www.epa.gov/owow/nps/pavements.pdf
Government Sources	EPA	Low Impact Development (LID): A Literature Review	10/00	http://www.epa.gov/nps/lid.pdf
Government Sources	EPA	Protecting Water Resources With Higher-Density Development	01/06	http://www.epa.gov/dced/pdf/protect_water_higher_density.pdf
Government Sources	EPA	Nonpoint Source News-Notes; Low-Impact Development Pays Off	05/05	http://www.epa.gov/owow/info/NewsNotes/issue75/75issue.pdf
Government Sources	EPA	Nonpoint Source News-Notes; Many Paths Lead to Adoption of Low Impact Development	10/05	http://www.epa.gov/owow/info/NewsNotes/issue76/76issue.pdf
Government Sources	EPA	Using Smart Growth Techniques as Stormwater Best Management Practices	12/05	http://www.epa.gov/dced/pdf/sg_stormwater_BMP.pdf
Government Sources	EPA	Low Impact Development (LID) and Other Green Design Strategies		http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=factsheet_results&view=specific&bmp=124
Government Sources	EPA	US EPA Storm Water Program's Webcast Series: Post Construction 101		http://www.epa.gov/npdes/outreach_files/webcast/mar1606/files/lobby.html
Government Sources	Los Angeles Bureau of Sanitation, Department of Public Works	Reference Guide for Stormwater Best Management Practices	07/00	http://www.lacity.org/SAN/wpd/WPD/download/pdfs/publications/bmp_refguide.pdf
Government Sources	Maryland Department of the Environment	Maryland Stormwater Design Manual Volumes I & II	10/00	http://www.mde.state.md.us/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.asp
Government Sources	Maryland, Prince George's County Department of Environmental Resources	Low-Impact Development Design Strategies: An Integrated Design Approach	06/99	http://www.epa.gov/owow/nps/lidnatl.pdf
Government Sources	Maryland, Prince George's County Department of Environmental Resources	Low-Impact Development Design: A New Paradigm for Stormwater Management Mimicking and Restoring the Natural Hydrologic Regime An Alternative Stormwater Management Technology		http://www.epa.gov/ORD/WebPubs/nctuw/Coffman.pdf
Government Sources	Metropolitan Area Planning Council (Boston, MA)	Massachusetts Low Impact Development Toolkit		http://www.mapc.org/LID.html
Government Sources	Outer Banks Hydrology Committee (North Carolina)	Report of LID Findings	11/05	
Industry Sources	American Society of Civil Engineers	Stormwater Management	2004	www.asce.org/pressroom/news/policy_details.cfm?hdlid=160
Industry Sources	Boston Business Journal (Giangrande, D.)	A Low-Impact Approach to Storm Water Management	8/27/2004	http://www.bizjournals.com/boston/stories/2004/08/30/focus6.html

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Industry Sources	California Builder: the Magazine of the California Building Industry Association (Frith, J.)	Building Green: It's Good for the Environment - and the Bottom Line	03-04/02	www.californiabuildermagazine.com/internal.asp?pid=32&spid
Industry Sources	California Builder: the Magazine of the California Building Industry Association (Grillo, T.)	Concrete Evidence: Age-Old Material Continues to Reinvent Itself		http://www.californiabuildermagazine.com/internal.asp?pid=194
Industry Sources	Carter & Burgess	Low Impact Development: 'Green' Approaches to Storm Water Management Preserve Natural Systems and Improve Water Quality	2004	http://www.c-b.com/information%20center/land%20development/ic.asp?tID=17&pID=282
Industry Sources	Environmental Water Resources Institute of the American Society of Civil Engineers	International Stormwater Best Management Practices Database		www.bmpdatabase.org
Industry Sources	National Association of Home Builders	Green Home Building Guidelines	2006	http://www.nahbrc.org/greenguidelines/complete_guidelines.pdf
Industry Sources	National Association of Home Builders Research Center	Builder's Guide to Low Impact Development	2003	http://www.toolbase.org/PDF/DesignGuides/Builder_LID.pdf
Industry Sources	National Association of Home Builders Research Center	Guides to Low Impact Development	2003	http://www.toolbase.org/Design-Construction-Guides/Land-Use/low-impact-development-guides
Industry Sources	National Association of Home Builders Research Center	Low Impact Development (LID) Practices for Storm Water Management		http://www.toolbase.org/Techinventory/TechDetails.aspx?ContentDetailID=909&BucketID=6&CategoryID=11
Industry Sources	National Association of Home Builders Research Center	Municipal Guide to Low Impact Development	2003	http://www.toolbase.org/PDF/DesignGuides/Municipal_LID.pdf
Industry Sources	National Association of Home Builders, Partnership for Advancing Technology in Housing (PATH)	The Practice of Low Impact Development	07/03	http://www.huduser.org/Publications/PDF/practLowImpctDevel.pdf
Industry Sources	National Association of Home Builders, Partnership for Advancing Technology in Housing (PATH)	Permeable Pavement		http://www.toolbase.org/techinv/techDetails.aspx?technologyID=98
Industry Sources	National Association of Home Builders, Partnership for Advancing Technology in Housing (PATH) ToolBase Services	Environmentally Green... Economically Green: Tools for a Green Land Development Program	2001	http://www.toolbase.org/PDF/DesignGuides/Enviro_Econ_Green.pdf
Industry Sources	National Association of Home Builders, Partnership for Advancing Technology in Housing (PATH) ToolBase Services	Low Impact Development Offers Some Solutions for Groundwater Issues	2001	
Industry Sources	Urban Land Institute, American Society of Civil Engineers, & National Association of Home Builders	Residential Storm Water Management	1975	http://www.toolbase.org/PDF/DesignGuides/storm_water_management.pdf
Industry Sources	Western Region Builder News	A Growing Trend in Stormwater Management	03/07	http://www.buildernewsmag.com/viewnews.pl?id=614
State and Municipal Storm Water Regulations	California (City of Santa Monica)	Santa Monica Municipal Code, Chapter 7.10: Urban Runoff Pollution	11/28/00	http://www.qcode.us/codes/santamonica/index.php
State and Municipal Storm Water Regulations	California (RWQCB, Los Angeles Region)	Order No. 01-182 (Dec. 13, 2001) (NPDES Permit No. CAS004001)	12/13/01	http://63.199.216.5/webdata/data/docs/6948_01-182_WDR.pdf
State and Municipal Storm Water Regulations	California (RWQCB, San Francisco Bay Region)	Contra Costa Countrywide NPDES Municipal Stormwater Permit Amendment	02/19/03	http://www.swrcb.ca.gov/rwqcb2/Agenda/02-19-03/02-19-03-13finalorder.doc

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State and Municipal Storm Water Regulations	Florida (St. Johns River Waste Management District)	Environmental Resource Permits: Regulations of Stormwater Management Systems	10/03/95	
State and Municipal Storm Water Regulations	Illinois	General NPDES Permit For Discharges from Small Municipal Separate Storm Sewer Systems	12/20/02	http://www.epa.state.il.us/water/permits/storm-water/general-ms4-permit.pdf
State and Municipal Storm Water Regulations	Maryland	Maryland's Stormwater Management Program	11/88	
State and Municipal Storm Water Regulations	Maryland	Explanation of Maryland's Stormwater Management Program	05/31/00	
State and Municipal Storm Water Regulations	Maryland	Maryland Model Stormwater Management Ordinance	07/00	http://www.mde.state.md.us/assets/document/sedimentstormwater/model_ordinance.pdf
State and Municipal Storm Water Regulations	Maryland	Stormwater Management Code, Title 26, Subtitle 17 Water Management, Chapter 02 Stormwater Management	10/00	http://www.dsd.state.md.us/comar/26/26.17.02.05.htm
State and Municipal Storm Water Regulations	Maryland (City of Chestertown)	Stormwater Management Ordinance	06/25/84	http://www.chestertown.com/gov/codehtml/0767-142.htm
State and Municipal Storm Water Regulations	Michigan (Grand Traverse County)	Soil Erosion, Sedimentation, and Stormwater Runoff Control Ordinance	2003	http://www.co.grand-traverse.mi.us/Assets/Departments/Drain+Commissioner/Departments-Drain+Commissioner-Soil+Erosion+Ordinance+9-9-03.pdf
State and Municipal Storm Water Regulations	Missouri	Missouri State Operating Permit	03/10/03	http://www.dnr.mo.gov/env/wpp/permits/issued/R004000.pdf
State and Municipal Storm Water Regulations	New Jersey	Stormwater Rules (N.J.A.C. Chapter 7:8)	2004	
State and Municipal Storm Water Regulations	New Jersey	Annual Groundwater Recharge Analysis	09/01/03	http://www.state.nj.us/dep/stormwater/tier_A/pdf/april2004public_excel2002njgrs_v2_0.xls
State and Municipal Storm Water Regulations	New Jersey	Tier A Municipal Stormwater NPDES Master General Permit	09/01/05	http://www.nj.gov/dep/dwq/pdf/final_tier_a_permit.pdf
State and Municipal Storm Water Regulations	New Jersey	NSPS Computations	01/31/06	http://www.state.nj.us/dep/stormwater/pdf/nsps_publicversion20060131.xls
State and Municipal Storm Water Regulations	New Jersey	NSPS User's Guide	01/06	http://www.njstormwater.org/pdf/nsps_userguide2006013.pdf
State and Municipal Storm Water Regulations	New Jersey	New Jersey Stormwater Best Management Practices Manual	02/04	http://www.state.nj.us/dep/stormwater/bmp_manual2.htm
State and Municipal Storm Water Regulations	New Jersey	Guidance for Development of Municipal Mitigation Plans	02/06	http://www.njstormwater.org/docs/munimitipplan030706.pdf
State and Municipal Storm Water Regulations	New Jersey (Zomorodi, K.)	Curve Number and Groundwater Recharge Credits for LID Facilities in NJ	2004	http://www.dewberry.com/uploadedFiles/Curve_Number_And_Groundwater_Recharge_Credits.PDF
State and Municipal Storm Water Regulations	Oregon (City of Portland)	Stormwater Management Manual	2004	http://www.portlandonline.com/bes/index.cfm?c=35122

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State and Municipal Storm Water Regulations	Oregon (City of Portland)	Portland Title 33: Planning and Zoning Code, for Landscaping and Screening, and Parking and Loading	04/22/06	http://www.portlandonline.com/shared/cfm/image.cfm?id=53315
State and Municipal Storm Water Regulations	Stafford County, Virginia Board of Supervisors	Municipal Code, Chapter 21.5 Stormwater Management	12/13/05	http://www.municode.com/resources/gateway.asp?sid=46&pid=11500

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State and Municipal Storm Water Regulations	Washington	Stormwater Management in Washington State, Volume I, Minimum Technical Requirements	08/99	
State and Municipal Storm Water Regulations	Washington	Phase I Municipal Stormwater NPDES General Permit (Draft	02/15/06	http://www.ecy.wa.gov/programs/wq/stormwater/municipal/phase_I_permit/draft_docs/Phase_I_final_draft_2_15_06.pdf
State and Municipal Storm Water Regulations	Washington (City of Olympia)	Low-Impact Development Strategy for Green Cove Basin: A Case Study in Regulatory Protection of Aquatic Habitat in Urbanizing Watersheds	10/02	http://www.psat.wa.gov/Programs/LID/Green_Cove.pdf
State and Municipal Storm Water Regulations	Washington (City of Seattle)	City of Seattle Stormwater, Grading, and Drainage Control Code	07/05/00	http://www.seattle.gov/dclu/codes/sgdccode.pdf
State and Municipal Storm Water Regulations	West Virginia	General National Pollutant Discharge Elimination System Water Pollution Control Permit	03/07/03	http://www.dep.state.wv.us/Docs/4582_SW_MS4_FinalDraft_issuance.pdf
Technical Manuals	Alameda Countywide Clean Water Program	Protecting Water Quality in Development Projects: A Guidebook of Post-Construction BMP Examples	08/05	http://www.basmaa.org/resources/files/ACCWP_Site_Design_Guidebook_final.pdf
Technical Manuals	Bay Area Stormwater Management Agencies Association (BASMAA)	Start at the Source	1999	http://www.basmaa.org/resources/files/Start%20at%20the%20Source%20%2D%20Design%20Guidance%20Manual%20for%20Stormwater%20Quality%20Protection%2Epdf
Technical Manuals	Bay Area Stormwater Management Agencies Association (BASMAA)	Using Site Design Techniques to Meet Development Standards for Storm Water Quality	05/03	http://www.basmaa.org/resources/files/Using%20Site%20Design%20Techniques%2Epdf
Technical Manuals	Caltrans, State of California Department of Transportation	Stormwater Quality Handbooks: Project Planning and Design Guide, Stormwater Pollution Prevention Plan	9/02	www.dot.ca.gov/hq/oppd/stormwtr/PPDG-with-revisions-7-26-05.pdf
Technical Manuals	Integrated Land Management, Inc.	Green Technology: The Delaware Urban Runoff Management Approach	01/04	http://www.dnrec.state.de.us/DNREC2000/Divisions/Soil/Stormwater/New/DURMM_TechnicalManual_01-04.pdf
Technical Manuals	New York	New York State Stormwater Management Design Manual	10/01	
Technical Manuals	Prince George's County, Maryland	Low-Impact Development Hydrologic Analysis	07/99	http://www.epa.gov/owow/nps/lid_hydr.pdf
Technical Manuals	Puget Sound Action Team / Washington State University Pierce County Extension	Low Impact Development: Technical Guidance Manual for Puget Sound	01/05	http://www.psat.wa.gov/Publications/LID_tech_manual05/LID_manual2005.pdf
Technical Manuals	Puget Sound Action Team and CH2M Hill	Technical Memorandum No. 1: Review of Low-Impact Development Techniques	1/16/04	http://www.psat.wa.gov/Programs/LID/LID_tech.htm
Technical Manuals	Puget Sound Action Team and CH2M Hill	Technical Memorandum No. 2: Analysis and Recommendations for the Use of LID Techniques in Puget Sound	1/16/04	http://www.psat.wa.gov/Programs/LID/LID_tech.htm
Technical Manuals	Puget Sound Action Team and CH2M Hill	Technical Memorandum No. 3: Suggested Adaptations to BMPs in the Washington Stormwater Management Manual to Include Benefits of LID Techniques	1/16/04	http://www.psat.wa.gov/Programs/LID/PSAT_TechMemo3.pdf
Technical Manuals	Texas Water Development Board	The Texas Manual on Rainwater Harvesting	2005	http://www.twdb.state.tx.us/publications/reports/RainwaterHarvestingManual_3rdedition.pdf
Technical Manuals	Urban Drainage and Flood Control District of Denver, Colorado	Urban Storm Drainage Criteria Manual		www.udfcd.org/downloads/down_critmanual.htm
Technical Manuals	Watershed Protection Techniques	Better Site Design	01/00	

Exhibit D

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4/10 Submission	Anacostia Waterfront Corporation	Restore and Revitalize: Water, Air, Habitat, Community	June-07
4/10 Submission	California Ocean Protection Council	Resolution of the California Ocean Protection Council Regarding Low Impact Development	May-08
4/10 Submission	California Ocean Protection Council (by Tetratech)	State and Local Policies Encouraging or Requiring Low Impact Development in California	Jan-08
4/10 Submission	California Regional Water Quality Control Board, Los Angeles Region	2006 CWA Section 303(d) List of Water Quality Limited Segments Requiring TMDLs	Jun-07
4/10 Submission	California Regional Water Quality Control Board, Los Angeles Region	Draft Strategy for Developing TMDLs and Attaining Water Quality Standards in the Los Angeles Region	Dec-02
4/10 Submission	California Regional Water Quality Control Board, San Diego Region	Order No. R9-2007-0001, NPDES NO. CAS0108758	Jan-07
4/10 Submission	California Regional Water Quality Control Board, San Diego Region	Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region	Mar-09
4/10 Submission	California Regional Water Quality Control Board, San Diego Region (submitted on behalf of the Copermittees to Order 2001-01)	Report of Waste Discharge, Application for Renewal of NPDES Municipal Stormwater Permit for San Diego County, August 25, 2005	Aug-05
4/10 Submission	California Regional Water Quality Control Board, San Francisco Bay Region	Revised Tentative Order R2-2009-XXXX, NPDES Permit No. CAS612008	Feb-09
4/10 Submission	California Regional Water Quality Control Board, Santa Ana Region	Order No. R8-2009-0030, NPDES No. CAS618030, 2nd Draft March 25, 2009	Mar-09
4/10 Submission	California Stormwater Quality Association (CASQA)	Stormwater Best Management Practice Handbook: Industrial and Commercial	Jan-03
4/10 Submission	Center for Watershed Protection	Impacts of Impervious Cover on Aquatic Systems	Mar-03

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4/10 Submission	City of Philadelphia Code	Section 600.xx - Stormwater Management	Jan-06
4/10 Submission	City of Philadelphia Water Department, Office of Watersheds	Stormwater Management Guidance Manual	Feb-08
4/10 Submission	E. Shaver, R. Horner, et al. (NALMS)	Fundamentals of Urban Runoff Management: Technical and Institutional Issues	2007
4/10 Submission	ECONorthwest	The Economics of Low-Impact Development: A Literature Review	Nov-07
4/10 Submission	EPA	10 E.A.D. 323 - IN RE: GOVERNMENT OF THE DISTRICT OF COLUMBIA MUNICIPAL SEPARATE STORM SEWER SYSTEM	Feb-02
4/10 Submission	EPA	61 FR 41697	Aug-96
4/10 Submission	EPA	61 FR 41698	Aug-96
4/10 Submission	EPA	64 CFR 68739	Dec-99
4/10 Submission	EPA	Measurable Goals Guidance for Phase II Small MS4s: Part 2. Process for Developing Measurable Goals Under a General Permit	Oct-07
4/10 Submission	EPA	Measurable Goals Guidance for Phase II Small MS4s: Part 2. Process for Developing Measurable Goals Under a General Permit	Oct-07
4/10 Submission	EPA	Measurable Goals Guidance for Phase II Small MS4s: Phase II BMP & Measurable Goal Examples	Feb-08
4/10 Submission	EPA	Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices	Dec-07
4/10 Submission	EPA Region 9	Letter from Douglas Eberhardt Re: Draft MS4 Permit for Orange County and Incorporated Cities within Orange County (NPDES Permit No. CAS618030)	Feb-09
4/10 Submission	EPA Region 9	Letter from Douglas Eberhardt Re: Draft MS4 Permit for San Francisco Bay Municipal Regional Stormwater NPDES Permit (Permit No. CAS612008)	Apr-09
4/10 Submission	Los Angeles County Department of Regional Planning	Letter from Karen Simmons re: Green Building Program	Jan-08

Category	Author/Agency/Organization	Title	Date of Publication
4/10 Submission	National Academy of Sciences - National Research Council	Urban Stormwater Management in the United States	2008
4/10 Submission	NOAA	Alternatives for Coastal Development: One Site, Three Scenarios	
4/10 Submission	NRDC	Stormwater Strategies: Community Responses to Runoff Pollution	May-99
4/10 Submission	Pudget Sound Action Team	Low Impact Development	Sept-06
4/10 Submission	R. Horner	Assessment of Evaporation Potential with Low-Impact Development Practices	
4/10 Submission	R. Horner	Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County	
4/10 Submission	Southern California Coastal Water Research Program	Managing Runoff to Protect Natural Streams: The Latest Developments on Investigation and Management of Hydormodification in California	Dec-05
4/10 Submission	State of California, State Water Resources Control Board	Order WQ 2001-15	Nov-01
4/10 Submission	State of California, State Water Resources Control Board	Order: WQ 2000 - 11	Oct-00
4/10 Submission	State of California, State Water Resources Control Board (by Low Impact Development Center)	A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption	Dec-07
4/10 Submission	State of North Carolina, Office of Administrative Hearings	North Carolina Wildlife Federation Central Piedmont Group of the NC Sierra Club, v. NC Division of Water Quality	Dec-06
4/10 Submission	State of Pennsylvania Department of Environmental Protection	Pennsylvania Stormwater BMP Manual	Dec-06
4/10 Submission	United States Code Service	42 USC 6834	2009
4/10 Submission	USGS	Effects of Lawn Fertilizer on Nutrient Concentration in Runoff from Lakeshore Lawns, Lauderdale Lakes, Wisconsin	July-02
4/10 Submission	Ventura County Watershed Protection District	Report of Waste Discharge (January 2005)	Jan-05
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	2004-05 Annual Report	Oct-05

Category	Author/Agency/Organization	Title	Date of Publication
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	2005-06 Annual Report	Oct-06
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	2006-07 Annual Report	Oct-07
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	2007-08 Annual Report	Oct-08
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	BMP IN: Infiltration Facility	Aug-01
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	Monitoring Program - NPDES Water Quality	Mar-09
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	Ventura Countywide Stormwater Monitoring Program 2007/08 Water Quality Monitoring Report	Oct-08
4/10 Submission	Ventura Countywide Stormwater Quality Management Program	Ventura Countywide Stormwater Quality Urban Impact Mitigation Plan	July-00
4/10 Submission	Washington State Pollution Control Hearings Board	Pudget Soundkeeper v. State of Washington: Findings of Fact, Conclusions of Law, and Order Phase I	Aug-08
4/10 Submission	West Virginia Department of Environmental Protection	Fact sheet, rationale and information for General WV/NPDES Permit for small Municipal Separate Storm Sewer Systems (MS4s)	Dec-08
4/10 Submission	West Virginia Department of Environmental Protection	WV National Pollution Discharge Elimination System Water Pollution Control Permit, Draft	

Exhibit E

SB-AR-579

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Courtesy	☐	Case Title	
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Serve	☐		
Last day to Complete Date: 4/10/09		Document (Ventura County MSZ Comments	AGENT FOR SERVICE? Y ☐ N ☐
Court			Client
Bankruptcy	☐		
U.S. Trustee	☐		Billing Ref. No. 250328
District	☐		Atty/Sec Sherry (for Margaret)
Superior	☐	Martha Pinta 4/10/09	Phone/Ext 310-434-2300
Other	☐		
Location		Other Address Executive Officer & Members of the Board, CA Regional Water Quality control board LA region 320 W 4th St. Suite 200 LA, CA 90013	
Downtown L.A.	☐		
Santa Ana	☐		
Santa Barbara	☐		
San Bernardino	☐		
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Attn: Margaret

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

February 24, 2010

[via certified mail & email]
Andrew R. Henderson, Esq.
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1330 South Valley Vista Drive
Diamond Bar, CA 91765
Andrew@biasc.org

[via certified mail only]
Mr. Michael Lewis
Construction Industry Coalition
on Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, CA 91791

Dear Messrs. Henderson and Lewis:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: SUSPEND DEADLINE FOR NEW SUBMISSIONS
SWRCB/OCC FILE A-2023

On February 10, 2010, I issued a letter requesting additional submissions on specific issues relating to the above-mentioned petition. The deadline set forth in that letter is now suspended, as explained below.

On February 18, 2010, the State Water Resources Control Board (State Water Board) Office of Chief Counsel received an e-mail from Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) staff, forwarding a corrected version of the Ventura County Municipal Separate Storm Sewer System permit. The e-mail indicated that this corrected version of the permit was circulated to permittees and other persons on January 28, 2010. It appears that this version includes significant changes from the version currently under review by State Water Board staff.

The March 11, 2010 deadline for new submissions is suspended until further notice. The petitioners, permittees, Los Angeles Water Board and other interested persons will be apprised of any new deadline or further developments. No new submissions or comments are requested at this time.

If you should have any questions, I may be reached at (916) 341-5169.

Sincerely,

Marleigh Wood
Senior Staff Counsel

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(Continued next page)

cc: (Continued)

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SB-AR-583

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March 3, 2010

CLIENT/MATTER NUMBER
096451-0101

Marleigh J. Wood
Senior Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
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Re: Petition of Building Industry legal Defense Foundation: Request for Additional Briefing and Evidence

Dear Ms. Wood:

On February 10, 2010, our client, the Building Industry Legal Defense Foundation ("BILD"), received a letter from the State Water Resources Control Board ("SWRCB") Office of Chief Counsel seeking new evidence and argument concerning BILD's Petition relating to Waste Discharge Requirements Order No. R4-2009-0057 [NPDES No. CAS004002] for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District (the "Petition"). Since receiving that request, BILD expended substantial time and effort marshaling a response.

On February 24, 2010, however, BILD received a second letter from the SWRCB Office of Chief Counsel, effectively withdrawing the request for additional evidence and argument concerning the Petition. As noted in that second letter, SWRCB has received a "corrected" version of the relevant Municipal Separate Storm Sewer System permit (the "Permit"), which includes significant changes from the version that had been under review by State Water Board staff. The February 24th letter states that the March 11, 2010 deadline for new submissions is suspended until further notice, and that "[n]o new submissions or comments are requested at this time."

Although we respect the State Water Board's notice that that no new submissions or comments are requested at this time, BILD feels that it is very important that SWRCB, while it reviews the Permit, be apprised of the important information that BILD has already marshaled in response to the February 10th letter, which is contained in this letter. The information is based on a substantial amount of research conducted by BILD, reflects developments that have occurred in recent months, and sheds new light on the unreasonableness of the terms and conditions of the Permit. Therefore, on behalf of BILD, we respectfully submit the following information for SWRCB's consideration as it evaluates the terms of the Permit.

As an initial matter, we note that, pursuant to California Code of Regulations part 23, section 2050.6 ("Supplemental Evidence"), any request to present additional evidence "shall include

a detailed statement of the nature of the evidence and of the facts to be provided," as well as "a detailed explanation of the reasons why the evidence could not previously have been submitted." To that end, this letter explains that the evidence and information presented in this letter became available and or relevant only after the Permit was issued by the Los Angeles Regional Quality Control Board ("Regional Board"), and therefore could not be considered or submitted prior to the permit adoption that occurred on May 7, 2009. In particular, the new evidence relates to more recent regional water board decisions which have rejected absolute on-site retention requirements like those in the Permit as well as State law and policy concerning the usefactory interests of the State and its citizens in stormwater runoff. We believe that the new information provided herein speaks directly to the reasonableness of the terms and conditions of the Permit, specifically those relating to "low impact development" ("LID") standards, and it should therefore be considered by SWRCB during their deliberations.

The environmental damages resulting from the LID requirements in the Ventura Permit are unique among MS4 Permits.

Specifically, attached hereto for your consideration is a detailed comparison chart that outlines the new development and redevelopment LID and hydromodification control performance criteria found in various California Municipal Separate Storm Sewer System ("MS4") permits adopted since the Permit was adopted. *See* attached chart. As it shows, **none** of the other MS4 permits require the absolute retention on site (i.e., zero discharge) of all design storms, and with good reason.

As SWRCB must appreciate, LID, when properly implemented, can have great benefits to a watershed, including effective controls of urban pollutants in storm water and an augmentation of groundwater resources. However, LID requiring absolute on-site *retention*, rather than *detention* plus treatment, and eventual release to downstream receptors, fails to achieve the overall LID objective of trying, to the extent reasonably feasible, to mimic the natural water balance and/or predevelopment flow regimes.

For example, the Permit assumes that, under natural conditions, 75-80% of on-site water would infiltrate into the ground. However, such an assumption is not supported in the Permit. The Permit requirement of 75-80% infiltration does not mimic the natural water balance, and leaves too much water on-site (to the detriment of dependent receiving waters or, for example, dependent farms located immediately downhill from an affected project).

By forcing permittees to retain and infiltrate significant percentages of water onsite (which conflicts with the natural tendencies of the water), a new set of environmental problems are potentially created. The newly-appreciated risks of a one-size-fits-all requirement of percolation into the ground, regardless of site characteristics and soil conditions, include:

- a significant risk of subsidence (in particular given typical storage constraints on a given site)

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- potential mobilization of contaminants located in the soils or groundwater on site
- conversion of downstream habitat that relies on stormwater runoff for survival
- creation of water rights issues if capturing diffuse surface water interferes with pre-existing rights
- making urban infill development essentially infeasible

As the other Regional Board jurisdictions have found (as demonstrated in the attached chart), there are environmentally and economically superior alternatives to any absolute on-site retention under LID. In considering the Permit, SWRCB should favor allowing flexibility in LID standards to reflect differing local contexts. Local water agencies can identify specific locations where infiltration can provide an environmental benefit, and treated runoff from permittee locations should be allowed to flow to those areas for effective use.

BILD would welcome the opportunity to explain the chart included herewith and at any hearing concerning the Permit, which we hope will be forthcoming. Until then, we thank SWRCB for its willingness to accept this letter and chart for consideration, and for its considered attention to this important matter.

Very truly yours,

S. Wayne Rosenbaum

Enclosure
cc: Andrew R. Henderson, Esq.

Comparison of New Development/Redevelopment LID and Hydromodification Control Performance Criteria in California MS4 Permits

	California MS4 Permit Comparison—Low Impact Development and Hydromodification Control Requirements						
Permit Criteria	**Staff Proposed Ventura Countywide Draft Permit LARWQCB 5/9/09**	**Adopted Ventura Countywide Permit LARWQCB 5/9/09**	**Adopted North Orange County Permit SARWQCB 6/3/09**	**Adopted SF Bay Municipal Regional Permit SFRWQCB 10/14/2009**	**Adopted South Orange County Permit SDRWQCB 12/16/2009**	**Adopted Riverside County Permit SARWQCB 1/29/2010**	**Adopted San Bernardino County Permit SARWQCB 1/29/2010**
›D BMP ection Priority	1. Infiltration 2. Store and reuse 3. Multiple Use Vegetated BMPs 4. Filtration BMPs w/underdrain 5. Modular/proprietary BMPs	1. Infiltration 2. Store and reuse 3. Evapotranspiration	1. Site design (conserve natural areas, etc) 2. Infiltration 3. Store and reuse 4. Evapotranspiration 5. Bioretention/ biofiltration	1. Site design (conserve natural areas, etc.) 2. Store and reuse 3. Roofs, sidewalks, patios, driveways, parking lots to vegetated areas 4. Permeable pavement 5. Vegetated treatment BMPs	1. Infiltration 2. Store and reuse 3. Evapotranspiration 4. Bioretention / biofiltration	1. Site design (conserve natural areas) 2. Infiltration 3. Store and use 4. Evapotranspiration 5. Bioretention / biofiltration	1. Site design (conserve natural areas) 2. Infiltration 3. Store and use 4. Evapotranspiration 5. Bioretention / biofiltration
LID Sizing Criteria	1. Retain and treat water quality volume (85th percentile event) 2. Treat excess surface discharge **3. NO MANDATORY RETENTION REQUIREMENT**	**1.** Retain water quality volume (85th percentile event) **WITHOUT ANY RUNOFF** **2. MANDATORY RETENTION REQUIREMENT** 3. 5% EIA, with allowance to go to 30% EIA with a showing of infeasibility; disconnection is defined as full retention of the water quality volume (85th percentile event) 4. Treat directly connected impervious and pervious areas 5. If infeasible to meet 30% EIA minimum, NO RECOURSE	1. Retain water quality volume (85th percentile event) or biotreat with a showing of infeasibility to retain the entire volume **2. NO MANDATORY RETENTION REQUIREMENT** 3. Treat excess surface discharge from water quality design storm per Water Quality Management Plan	1. Size all treatment systems for 85th percentile event) **2. NO MANDATORY RETENTION REQUIREMENT** 3. Treat excess surface discharge	1. Retain onsite water quality volume (85th percentile event) without any runoff 2. If #1 infeasible, treat excess surface discharge with biofiltration; increase sizing for biotreatment BMPs by .75 times the design storm volume 3. If #2 infeasible to biotreat, use conventional BMPs and mitigate volume reduction offsite **4. NO MANDATORY RETENTION REQUIREMENT**	1. Retain and treat water quality volume (85th percentile event) 2. Treat excess surface discharge from water quality design storm per Water Quality Management Plan **3. NO MANDATORY RETENTION REQUIREMENT**	1. Retain and treat water quality volume (85th percentile event) 2. Treat excess surface discharge from water quality design storm per Water Quality Management Plan **3. NO MANDATORY RETENTION REQUIREMENT**
LID Infeasibility and Mitigation Process	1. RPAMP (Redevelopment Project Area Master Plan); not applicable to new development 2. In-lieu fee 3. Mitigation credits	1. Submit hydrologic and/or design analysis showing project meets various criteria 2. Make up volume retention requirement off-site either directly or via in-lieu fee 3. Off-site mitigation must be in same sub-watershed 4. Off-site mitigation must	1. Submit hydrologic and/or design analysis showing project meets various criteria 2. Create watershed based infiltration map to target stormwater infiltration and storage 3. Create urban runoff fund to fund watershed and sub-watershed scale LID projects	1. Exemption for specific types of infill projects 2. Equivalent off-site 3. In-lieu fee	1. Offsite "waiver" (mitigation) programs to be developed, 2. In-lieu fees 3. Water quality credit system	1. Submit hydrologic and/or design analysis showing project meets various criteria 2. Create urban runoff fund to fund watershed and sub-watershed scale LID projects 3. Create watershed LID water quality credit system	1. Submit hydrologic and/or design analysis showing project meets various criteria 2. Create urban runoff fund to fund watershed and sub-watershed scale LID projects 3. Create watershed LID water quality credit system

Permit Criteria	California MS4 Permit Comparison—Low Impact Development and Hydromodification Control Requirements						
	Staff Proposed Ventura Countywide Draft Permit LARWQCB 5/9/09	**Adopted Ventura Countywide Permit LARWQCB 5/9/09**	**Adopted North Orange County Permit SARWQCB 6/3/09**	**Adopted SF Bay Municipal Regional Permit SFRWQCB 10/14/2009**	**Adopted South Orange County Permit SDRWQCB 12/16/2009**	**Adopted Riverside County Permit SARWQCB 1/29/2010**	**Adopted San Bernardino County Permit SARWQCB 1/29/2010**
		be completed in 3-4 yrs	4. Create watershed LID water quality credit system				
LID BMP Placement Standards	1. 5% EIA for new development 2. 5% EIA goal for redevelopment However, EIA defined as any disconnection between impervious areas and the property line, which would allows for bio-filtration and the mimicking of pre-development hydrology.	1. 5% EIA for total project area, unless infeasible 2. Max. 30% EIA for total project area regardless of feasibility 3. Demonstrate achievement of 5% EIA onsite using only LID BMPs that infiltrate, store and reuse or evapotranspire to maximum extent feasible 4. To the extent #3 is infeasible, use LID biotreatment BMPs onsite as required to achieve at least a maximum of 30% EIA, with volume reduction mitigation in the same watershed	**1. NO EIA REQUIREMENT** 2. LID BMPs should be implemented preferentially based on feasibility and desirability (ex: for water supply, environmental , or smart gro wth criteria): a. On-site b. Close c. Sub-regional d. Regional	**1. NO EIA REQUIREMENT**	1. **NO EIA REQUIREMENT** 2. LID BMPs should be implemented preferentially favoring first retention then biotreatment: a. On-site b. Close c. Sub-regional d. Regional	**1. NO EIA REQUIREMENT** 2. LID BMPs should be implemented preferentially based on feasibility and desirability (ex: for water supply, environmental , or smart growth criteria): a. On-site b. Close c. Sub-regional d. Regional	**1. NO EIA REQUIREMENT** 2. LID BMPs should be implemented preferentially based on feasibility and desirability (ex: for water supply, environmental , or smart growth criteria): a. On-site b. Close c. Sub-regional d. Regional
Hydromodification Control Performance Standard	1. Interim Standards: a. Projects < 50 acres implement LID and/or source control BMPs; b. Projects > 50 acres develop and implement hydromodification analysis study that incorporates an erosion potential (EP) equal to 1 or a value protective of natural drainage systems; c. Project proponent and permittee develop an equivalent method based on flow duration control using nomographs relating planned imperviousness area and local soil type to determine control requirements 2. Final standards: maintain	1. None included at the time of permit adoption on 5/9/2009 2. Reinstated per Errata released by LARWQCB on 1/29/2010	For priority development projects that may adversely affect natural channels or sensitive habitat or resources: 1. Post-development volume and time of concentration do not exceed pre-development condition for a 2-year frequency event; tolerance = 5% 2. Match hydrograph for 2-year event within 10%; if volume cannot be matched then match peak flow within 10% 3. Infiltrate at least the runoff from a two-year storm event	1. Performance standard varies by County 2. Discharges shall not cause an increase in the erosion potential of the receiving water over pre-project condition 3. Post-project discharge rates and durations match pre-project discharge rates and durations from 10% of the pre-project 2-yr peak flow up to the pre-project 10-yr peak flow 4. Post-project discharge rates and durations match from 20% of the 2-yr peak flow up to the pre-project 10-yr peak flow. 5. Post project flow duration curve shall not deviate above the pre-project flow	1. Interim Standards: Post-project runoff flow rates and durations shall not exceed pre-project runoff flow rates and durations. a. For flow rates from 10% of the 2-year storm event to the 5-year storm, the post-project peak flows shall not exceed predevelopment peak flows b. For flow rates from the 5-year storm to the 10-year storm, the post project peak flows may exceed predevelopment flows by up to 10% of the 1-year frequency interval 2. Standards upon HMP	For priority development projects that may adversely affect natural channels or sensitive habitat or resources: 1. Post development volume and time of concentration and peak discharge velocity is maintained within 5% of pre-development condition for 2-year storm return frequency 2. Construct sediment budget and perform sediment transport analysis for 2-year frequency event	For priority development projects that may adversely affect natural channels or sensitive habitat or resources: 1. Post development volume and time of concentration and peak discharge velocity is maintained within 5% of pre-development condition for 2-year, storm return frequency 2. Construct sediment budget and perform sediment transport analysis for 2-year frequency event

Permit Criteria	California MS4 Permit Comparison—Low Impact Development and Hydromodification Control Requirements						
	Staff Proposed Ventura Countywide Draft Permit LARWQCB 5/9/09	**Adopted Ventura Countywide Permit LARWQCB 5/9/09**	**Adopted North Orange County Permit SARWQCB 6/3/09**	**Adopted SF Bay Municipal Regional Permit SFRWQCB 10/14/2009**	**Adopted South Orange County Permit SDRWQCB 12/16/2009**	**Adopted Riverside County Permit SARWQCB 1/29/2010**	**Adopted San Bernardino County Permit SARWQCB 1/29/2010**
	project's pre-project storm water runoff flow rates and durations by maintaining an erosion potential (EP) in stream of 1 unless an alternative value can be shown to be protective of the natural drainage system from erosion, incision, and sedimentation			duration curve by more than 10% over more than 10% of the length of the flow range	approval: Post-project runoff flow rates and durations shall not exceed pre-project runoff flow rates and durations from 10% of the predevelopment 2-year runoff event up to the pre-project 10-year runoff event and compensate for loss of sediment supply.		
Hydromodification Controls Allowed	1. May include one or combination of on-site, regional, or subregional hydromodification control BMPs, LID strategies, or stream restoration measures	1. None initially provided 2. Reinstated per Errata released by LARWQCB on 1/29/2010	1. In order of priority install site design controls, on-site controls, off-site controls, or in-stream controls	1. In order of priority install on-site, off-site/regional controls, or in-stream controls	1. Final HMP must include management measures prioritized in the following order: hydrologic control measures, on-site management controls, regional controls upstream of the receiving water, and in-stream controls	1. In order of priority install on-site, off-site, or in-stream controls	1. In order of priority install on-site, off-site, or in-stream controls
...dromodification ...trol ...emptions and Process	1. Not required for projects less than 1 acre 2. Replacement, maintenance, or repair of flood control facility, storm drain, or transportation network 3. Redevelopment projects in urban core that do not increase EIA or decrease infiltration capacity of pervious area compared to pre-project conditions 4. Projects that drain directly or via storm drain to a sump, lake, area under tidal influence, or waterway that has a 100-year peak flow of 25,000 cfs or greater 5. Projects that discharge directly or via storm drain into concrete or improved channels which are non susceptible to hydromodification impacts	1. None given 2. Reinstated per Errata released by LARWQCB on 1/29/2010	1. Not required when all downstream conveyance channels that will receive runoff are engineered, hardened, and regularly maintained to ensure design flow capacity and no sensitive habitat areas will be affected	1. Not required for projects less than 1 acre 2. For Vallejo permittees: standard shall not apply where a project discharges stormwater runoff a. Into creeks or storm drains that are concrete-lined or significantly hardened downstream to their outfall to the San Francisco Bay; b. Discharges to an underground storm drain discharging to the Bay; c. or a project located in a highly developed watershed	1. Co-permittees have discretion to not require hydromodification controls where: a. Discharge of storm water runoff into underground storm drains discharging directly to bays or ocean; b. Discharges storm water runoff into conveyance channels whose bed and bank are concrete lined all the way from the point of discharge to ocean water, enclosed bays, estuaries, or water storage reservoirs and lakes	1. Not required for projects less than 1 acre 2. Not required when downstream channels are engineered, hardened, and maintained and no sensitive habitat affected	1. Not required for projects less than 1 acre 2. Not required when downstream channels are engineered, hardened, and maintained and no sensitive habitat affected

State Water Resources Control Board

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Arnold Schwarzenegger
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March 10, 2010

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Diamond Bar, CA 91765
Andrew@biasc.org

Mr. Michael Lewis **[via U.S. mail only]**
Construction Industry Coalition on Water Quality
2149 E. Garvey Avenue North, Suite A-11
West Covina, CA 91791

Dear Ms. Egoscue and Mssrs. Henderson and Lewis:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: REQUEST FOR VOLUNTARY REMAND AND ABEYANCE
SWRCB/OCC FILE A-2023

The purpose of this letter is to request that the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) agree to voluntary remand of Order No. R4-2009-0057 (Ventura MS4 permit) and that the Building Industry Legal Defense Foundation, Construction Industry Coalition on Water Quality and Building Industry Association of Southern California, Inc. (Petitioners) agree to place the above petition in abeyance. As explained more fully below, in light of apparent irregularities and confusion in this matter, the State Water Resources Control Board (State Water Board) cannot complete its review of the petition prior to the deadline for completion.

On July 2, 2009, the State Water Board Office of Chief Counsel issued a Notice of Complete Petition in the above-referenced matter, requesting that the Los Angeles Water Board submit the administrative record and that it and other interested persons file any responses to the petition within thirty (30) days. Pursuant to California Code of Regulations, title 23, section 2050.5, subdivision (b), the State Water Board must review and act on the petition within two-hundred seventy (270) days of the mailing date of that letter. If formal disposition of the matter

is not made within this time limit, the petition is deemed denied. (*Ibid.*) The regulations allow extension of the deadline for sixty (60) days with written agreement from the petitioner. (*Ibid.*). Further, if a petition is placed in abeyance, abeyance tolls the 270-day deadline. (*Id.*, subd. (d).) The State Water Board's resolution deadline for this matter is March 29, 2010.

The Los Angeles Water Board adopted the Ventura MS4 Permit on May 7, 2009. It appears that the Los Angeles Water Board initially circulated the adopted permit on June 2, 2009. Petitioners filed a timely challenge to the Ventura MS4 Permit on June 8, 2009. On or before August 3, 2009, the Los Angeles Water Board transmitted to the State Water Board's Office of Chief Counsel the June 2, 2009 version of the permit, a supporting administrative record, and a response to the petition.

On February 23, 2010, the State Water Board staff reviewing the petition became aware of major corrections to the Ventura MS4 Permit that had been made subsequent to the Los Angeles Water Board's June 2, 2009 issuance of the permit and that were not reflected in the version of the Ventura MS4 Permit under review. Apparently, these corrections to the Ventura MS4 were made public in January 2010, nearly eight months after the Los Angeles Water Board circulated the adopted permit. About the same time, the State Water Board became aware of a significant number of documents that may have been omitted from the administrative record transmitted to the State Water Board.

Previous procedural questions were raised at the outset of State Water Board review, including a request from the Los Angeles Water Board in its response to the petition, asking that the State Water Board correct a finding in the Permit. In addition, Petitioners have argued that the approved version of the Permit should have been recirculated prior to adoption because of alleged irregularities in the hearing.

In light of the substantial new information submitted, confusion regarding the record, and other procedural irregularities, we request that the Los Angeles Water Board agree to a voluntary remand of the matter in order to address these issues. Without making a determination on whether a further hearing is necessary, we note that the Los Angeles Water Board may decide to hold a new evidentiary hearing. Final resolution of the merits of the petition by the State Water Board would be extremely difficult in light of the various issues outstanding, either by March 29, or by May 28, if the deadline were extended 60 days. We therefore request that Petitioners agree to place the matter into abeyance pending Los Angeles Water Board reconsideration. Because the State Water Board's resolution deadline for this matter is imminent, please respond no later than **March 18, 2010.**

Because of the likelihood that additional time may be necessary for the Los Angeles Water Board and the Petitioners, and other interested persons, to respond to this request, we further ask that Petitioners agree to a 60-day extension of the State Water Board's petition resolution deadline, in accordance with California Code of Regulations, title 23, section 2050.5, subdivision (b). Should we receive from the Petitioners a written agreement to place the petition in abeyance and/or to extend the deadline for resolution by 60 days, we will consider any requests for a brief extension of the March 18 deadline for responding to this letter.

If you should have any questions regarding this matter, please contact Marleigh Wood of my staff, at (916) 341-5169.

Sincerely,

Michael A.M. Lauffer
Chief Counsel

cc: See next page

cc: **[via U.S. mail & email]**
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Lyris List **[via email only]**

Interested Persons List

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Ms. Tracy Woods **[via email only]**
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California Regional Water Quality Control Board
Los Angeles Region

Linda S. Adams
Secretary for
Environmental Protection

320 West Fourth Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • Fax (213) 576-6640
http://www.waterboards.ca.gov/losangeles

Arnold Schwarzenegger
Governor

March 11, 2010

[via email only]
Michael A.M. Lauffer, Chief Counsel
Office of Chief Counsel
State Water Resources Control Board
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Sacramento, CA 95812-0100
mlauffer@waterboards.ca.gov

Dear Mr. Lauffer:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057): LOS ANGELES WATER BOARD AGREEMENT TO VOLUNTARY REMAND
SWRCB/OCC FILE A-2023

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) received your letter yesterday requesting that we agree to a voluntary remand of Order No. R4-2009-0057 (Ventura MS4 Permit) in order to address perceived procedural issues.

The Los Angeles Water Board hereby agrees to a voluntary remand. At this time, we intend to hold a hearing on the Ventura MS4 Permit at the Los Angeles Water Board's regularly scheduled meeting on July 8, 2010. Parties and interested persons will be notified of the exact time and place of the hearing at a later date.

Please contact me should you have any questions regarding this matter.

Sincerely,

Tracy J. Egoscue
Executive Officer

cc: See next page

cc: **[via email only]**
Andrew R. Henderson, Esq.
Building Industry Legal Defense Foundation
1330 South Valley Vista Drive
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[via U.S. mail only]
Michael Lewis
Construction Industry Coalition on Water Quality
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[via email only]
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March 17, 2010

CLIENT/MATTER NUMBER
096451-0101

Michael Lauffer
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
22nd Floor
Sacramento, California 95812

Re: Request for Voluntary Remand and Abeyance SWRCB/OCC File A-2023

Dear Michael:

Our clients, the Building Industry Legal Defense Foundation et al., are the petitioners concerning the above-referenced file. On March 10, 2010, they received a letter from you which requests (i) that the Los Angeles Regional Water Quality Control Board (the "Regional Board") agree to a voluntary remand of Order No. R4-2009-0057 (the Ventura MS4 permit – or the "Order"), and (ii) that our clients agree to place their petition challenging the Order in abeyance. Your letter states that the State Board is unable to review of our clients' petition prior to the approaching resolution deadline due to various irregularities in the processes undertaken by the Regional Board when adopting and then later editing (or attempting to edit) the Order.

California Code of Regulations, title 23, section 2050.5 provides that the State Board shall review and act on a petition within 270 days from the date of mailing the Notice of Complete Petition (which was mailed on July 2, 2009), unless a hearing is held by the State Board. If a hearing is held, the State Board shall act on the petition within 330 days from the date the Notice was mailed, or within 120 days of the close of the hearing, whichever is later. As your letter states, the deadline for the State Board to resolve this matter is March 29, 2010. If a formal disposition is not made by the State Board by that date, the petition is deemed denied, at which time our clients' remaining alternative would be to seek relief in superior court.

Our reading of the regulations relating to remand of a permit to a Regional Board indicates that a mere "voluntary remand" – without directions – is not an available procedural step for the State Board to take. Given the serious time constraints noted above on the State Board's review of the permit and our clients' petition, however, we propose the following:

Our clients would be willing to stipulate to a withdrawal of their petition if the Regional Board would stipulate that it will stay the Planning and Land Development Program requirements of the Order, Part 4(E), and begin the permit review process over again. Notably, we understand that the governmental permittees have themselves also asked for the same, narrowly-

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tailored stay in the effectiveness of that one particular subpart of the Order – Part 4(E). Such a step would allow our clients to address both the significant flaws in the substance of the Order and the procedural missteps that have occurred in the past year. Furthermore, Part 4(E) requires a very significant effort on the part of the Regional Board in drafting the required Technical Guidance Manual. If the Regional Board were to put in the time, effort and money to create the Technical Guidance Manual now while the status of the permit is still in question, it may be wasted effort, or worse, could potentially prejudice the Regional Board in favor of upholding the provisions of Part 4(E) so that the work to date would not have been in vain.

If the State Board would require a granting of a 60-day extension from our clients in order to accommodate the convening of a public meeting of the State Board for the purpose of approving such a settlement, our clients would be amenable to such an extension. If, however, the Regional Board does not agree to such a course, our clients respectfully decline to grant the request for abeyance or the request for a 60-day extension. Instead, we respectfully ask the State Board to issue an order promptly pursuant to California Code of Regulations, title 23, section 2052(a)(2)(C), ***directing*** the Regional Board to both (i) accept a remand of the Order for purposes of undertaking the proper public participation process by which a permit may be issued, and (ii) stay the effectiveness of Part 4(E) of the Order until, at a minimum, such time as a successor permit can be properly issued. The State Board should also direct that the land use and development provisions of the prior Ventura MS4 permit should be reinstated or otherwise continue in effect during the pendency of further permit development.

Lastly, the State Board should take this regrettable opportunity to express to the Regional Board – and indeed to all other regional water boards as well – the need for strict adherence to the public's procedural due process rights in all such permitting matters. Far too often, the regulated community is blindsided by permit language that makes its way into final permit language when it should have been reflected – if ever at all – first in a tentative draft order for fair public comment. My clients therefore respectfully ask the State Board, either in any public meeting to approve a stipulated agreement (if one can be reached swiftly) or in an order to the Regional Board remanding the Order with directions, to emphasize the importance of the public's procedural due process rights.

Please feel free to contact me with any questions or if I can help in any way.

Very truly yours,

S. Wayne Rosenbaum

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cc: Noah Garrison [via email]
Theresa A. Dunham, Esq. [via U.S. mail]
Deborah Smith [via email]
Samuel Unger [via email]
Elizabeth Miller Jennings, Esq. [via email]
Doug Eberhardt [via email]
Tracy Woods [via email]
Michael J. Levy, Esq. [via email]
Jennifer L. Fordyce, Esq. [via email]
Jeffery M. Ogata, Esq. [via email]
Andrew Henderson [via email]
Holly Schroeder [via email]

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

MAR 17 2010

Ms. Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Michael Lauffer, Chief Counsel
California State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95812-0100

Re: SWRCB/OCC File A-2023

Dear Ms. Egoscue and Mr. Lauffer:

We are in receipt of Mr. Lauffer's March 10, 2010 letter regarding the Building Industry's Petition challenging the Ventura County Municipal Separate Storm Sewer System (MS4) permit (SWRCB/OCC File A-2023), and Ms. Egoscue's March 11, 2010 reply.

EPA strongly supports the Ventura MS4 permit as adopted on May 7, 2009. Notably, the permit's New Development/Redevelopment Performance Criteria (Section 4.E.III.) contain clear, measurable and enforceable requirements for the use of Low Impact Development to protect water quality from stormwater runoff. We regret learning of the confusion that has resulted from administrative and procedural errors made subsequent to the May 7, 2009 adoption hearing.

We recognize that the record for resolution of the Petition must be clear. Mr. Lauffer's March 10, 2010 letter describes several inconsistencies in the record that should be clearly addressed. However, Mr. Lauffer's letter also references the Petitioners' argument that there were "alleged irregularities in the hearing" and we believe these were effectively addressed by the Los Angeles Water Board's August 3, 2009 Response to the Petition (See Response to Contention #1) and need not be further addressed on remand.

Based on Ms. Egoscue's March 11, 2010 response to Mr. Lauffer, we understand that the Los Angeles Water Board is planning to hold a hearing on this permit on July 8, 2010. Given the process followed in over two years of public workshops on the renewal of this permit, this hearing should not be a forum for reconsidering issues decided at the May 7, 2009 adoption hearing. It would be reasonable for the July 8 hearing to focus only on the issues described in the March 10, 2010 letter as:

- Corrections to the permit that had been made subsequent to the Los Angeles Water Board's June 2, 2009 issuance of the permit.
- Documents that may have been omitted from the administrative record transferred to the State Water Board.
- The corrected finding requested by the Los Angeles Water Board.

By focusing the July 8 hearing on these matters, the confusion regarding the record may be addressed, and this matter may be considered and resolved in a clear and timely manner.

By renewing the Ventura MS4 permit, the Los Angeles Water Board made positive improvements to the previous Ventura MS4 permit, which had expired in July, 2005. At the Los Angeles Water Board's December, 2009 hearing, Ms. Egoscue stated that one of her priorities for 2010 was to begin the public process for renewal of the Los Angeles County MS4 permit. We strongly agree with this priority, and note that work on the Los Angeles County permit, which expired in December, 2006, would be valuable use of the Regional Board's limited resources that should not be diverted by revisiting provisions of the Ventura County permit which were resolved at the May 7, 2009 adoption hearing.

We look forward to working with both of your offices to continue the progress the State of California has made over the past year to improve stormwater management.

Sincerely,

Alexis Strauss 17 March 2010

Alexis Strauss, Director
Water Division

cc: Andrew R. Henderson, Building Industry Legal Defense
Michael Lewis, Construction Industry Coalition on Water Quality
Noah Garrison, Natural Resources Defense Council

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March 18, 2010

CLIENT/MATTER NUMBER
096451-0101

Michael Lauffer
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
22nd Floor
Sacramento, California 95812

Re: ERRATA: Request for Voluntary Remand and Abeyance
SWRCB/OCC File A-2023

Dear Michael:

Yesterday, we submitted to you a response to your Request for Voluntary Remand and Abeyance, SWRCB/OCC File A-2023. Regrettably, the response contained an inadvertent drafting error on page two, which we would like to correct. Therefore, please accept and substitute the attached corrected letter, which has removed the inaccuracy and replaced it with what we intended to impart. I apologize for any confusion this may cause. Please let me know if you have any questions.

Very truly yours,

Elizabeth A. Cason

cc: Noah Garrison [via email]
Theresa A. Dunham, Esq. [via U.S. mail]
Deborah Smith [via email]
Samuel Unger [via email]
Elizabeth Miller Jennings, Esq. [via email]
Doug Eberhardt [via email]
Tracy Woods [via email]
Michael J. Levy, Esq. [via email]
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March 18, 2010

CLIENT/MATTER NUMBER
096451-0101

Michael Lauffer
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
22nd Floor
Sacramento, California 95812

Re: CORRECTED: Request for Voluntary Remand and Abeyance
SWRCB/OCC File A-2023

Dear Michael:

Our clients, the Building Industry Legal Defense Foundation et al., are the petitioners concerning the above-referenced file. On March 10, 2010, they received a letter from you which requests (i) that the Los Angeles Regional Water Quality Control Board (the "Regional Board") agree to a voluntary remand of Order No. R4-2009-0057 (the Ventura MS4 permit – or the "Order"), and (ii) that our clients agree to place their petition challenging the Order in abeyance. Your letter states that the State Board is unable to review of our clients' petition prior to the approaching resolution deadline due to various irregularities in the processes undertaken by the Regional Board when adopting and then later editing (or attempting to edit) the Order.

California Code of Regulations, title 23, section 2050.5 provides that the State Board shall review and act on a petition within 270 days from the date of mailing the Notice of Complete Petition (which was mailed on July 2, 2009), unless a hearing is held by the State Board. If a hearing is held, the State Board shall act on the petition within 330 days from the date the Notice was mailed, or within 120 days of the close of the hearing, whichever is later. As your letter states, the deadline for the State Board to resolve this matter is March 29, 2010. If a formal disposition is not made by the State Board by that date, the petition is deemed denied, at which time our clients' remaining alternative would be to seek relief in superior court.

Our reading of the regulations relating to remand of a permit to a Regional Board indicates that a mere "voluntary remand" – without directions – is not an available procedural step for the State Board to take. Given the serious time constraints noted above on the State Board's review of the permit and our clients' petition, however, we propose the following:

Our clients would be willing to stipulate to a withdrawal of their petition if the Regional Board would stipulate that it will stay the Planning and Land Development Program requirements of the Order, Part 4(E), and begin the permit review process over again. Notably, we understand that the governmental permittees have themselves also asked for the same, narrowly-

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tailored stay in the effectiveness of that one particular subpart of the Order – Part 4(E). Such a step would allow our clients to address both the significant flaws in the substance of the Order and the procedural missteps that have occurred in the past year. Furthermore, Part 4(E) requires a very significant effort on the part of the Permittees in drafting the required Technical Guidance Manual, as well as review by Regional Board staff. If the Permittees and Regional Board staff were to put in the time, effort and money to create and review the Technical Guidance Manual now, while the status of the permit is still in question, it may all go to waste; or, worse, it could potentially prejudice the Regional Board in favor of upholding the provisions of Part 4(E) so that work would not have been in vain.

If the State Board would require a granting of a 60-day extension from our clients in order to accommodate the convening of a public meeting of the State Board for the purpose of approving such a settlement, our clients would be amenable to such an extension. If, however, the Regional Board does not agree to such a course, our clients respectfully decline to grant the request for abeyance or the request for a 60-day extension. Instead, we respectfully ask the State Board to issue an order promptly pursuant to California Code of Regulations, title 23, section 2052(a)(2)(C), ***directing*** the Regional Board to both (i) accept a remand of the Order for purposes of undertaking the proper public participation process by which a permit may be issued, and (ii) stay the effectiveness of Part 4(E) of the Order until, at a minimum, such time as a successor permit can be properly issued. The State Board should also direct that the land use and development provisions of the prior Ventura MS4 permit should be reinstated or otherwise continue in effect during the pendency of further permit development.

Lastly, the State Board should take this regrettable opportunity to express to the Regional Board – and indeed to all other regional water boards as well – the need for strict adherence to the public's procedural due process rights in all such permitting matters. Far too often, the regulated community is blindsided by permit language that makes its way into final permit language when it should have been reflected – if ever at all – first in a tentative draft order for fair public comment. My clients therefore respectfully ask the State Board, either in any public meeting to approve a stipulated agreement (if one can be reached swiftly) or in an order to the Regional Board remanding the Order with directions, to emphasize the importance of the public's procedural due process rights.

Please feel free to contact me with any questions or if I can help in any way.

Very truly yours,

S. Wayne Rosenbaum

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cc: Noah Garrison [via email]
Theresa A. Dunham, Esq. [via U.S. mail]
Deborah Smith [via email]
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Via Email and U.S. Mail

March 18, 2010

Michael Lauffer
Marleigh Wood
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
P.O. Box 100
Sacramento, CA 95812-0100

Re: Request for Voluntary Remand and Abeyance in the Petition of the Ventura County Municipal Stormwater Permit – SWRCB/OCC File A-2023

Dear Mr. Lauffer:

On behalf of the Natural Resources Defense Council ("NRDC") and Heal the Bay, we are writing to express our concern over the State Water Resources Control Board's ("State Board") letter of March 10, 2010 ("March 10th Letter"), regarding the Petition of the Building Industry Legal Defense Foundation, et al. of Order No. R4-2009-0057, NPDES No. CAS004002, for Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from the Municipal Separate Storm Sewer Systems within the Ventura County Watershed Protection District, County of Ventura and the Incorporated Cities Therein, May 7, 2009 (circulated June 2, 2009) ("Permit"), State Board/OCC File A-2023 ("Petition"). We are troubled by the State Board's proposed request for the Los Angeles Regional Water Quality Control Board ("Regional Board") to accept a voluntary remand of the Permit. Remanding the Permit to the Regional Board has the potential to result in further, open-ended evidentiary hearings on an already long overdue Permit. It threatens to delay proper implementation of the Permit and its provisions, and unravel the end result of an arduous, two-year long public process, and a fragile consensus on Permit language reached between the Permittees and stakeholder environmental groups. As a result, we urge the State Board to reconsider its proposal requesting remand.

Introduction

The process after the May 7, 2009 Regional Board hearing at which the Permit was adopted reflects a broad institutional failure, with potentially far-reaching and damaging consequences to the public. Critically in this regard, the key issues identified by the State Board as grounds for requesting a voluntary remand of the Permit (which in reality represent breakdowns in the petition process), involve issues that arose only *after* the Permit's adoption. As discussed in greater detail below, these issues concern: clerical errors made by Regional

Board Staff in issuing the final version of the Permit for public release after the Board had voted to adopt the Permit; omissions of material by Regional Board Staff made in preparing the administrative record in this Petition for transmittal to the State Board; and, a limited, though in our view unnecessary, post-adoption request by the Regional Board to amend a finding in the Permit to affirm the Regional Board's authority to base decisions on an independent weighing of the evidence in the record. The State Board knew of all or most of these issues early in the administrative appellate process.

We understand that the State Board has sought an agreement from the Petitioners to extend the deadline to act on the Petition by 60 days, pursuant to 23 Cal. Code Reg. § 2050.5(b). Given the tremendous potential for disruption that remand could cause for a Permit that has already seen unprecedented public input and opportunity for comment, we urge the State Board to additionally seek a stipulation or agreement from Petitioners to place the Petition in abeyance, and to do so without remanding the Permit to the Regional Board. This course would allow the State Board sufficient time to review a corrected administrative record once it is transmitted by the Regional Board and to properly carry out its responsibility to act on the Petition before it. Though we disagree with the State Board's current proposal, in the event that it persists in its decision to remand the Permit, we urge the State Board to significantly narrow the scope of any potential remand to only those issues it has currently identified as precluding further review of the Permit. To this end, while we do not agree that a new evidentiary hearing on the Permit should be held by the Regional Board at all, in the event any such hearing does occur, the State Board should instruct the Regional Board to limit the scope of the hearing to include only: 1) corrections made to the permit after its adoption and circulation by the Regional Board on June 2, 2009; 2) correction of the administrative record to include documents erroneously omitted by the Regional Board; and, 3) the Regional Board's request to correct a finding in the Permit. To the extent the State Board believes these issues provide justification for remand at all, there is simply no support for the argument that they justify a revisiting of the entire permit or of its substantive provisions.

<u>Issues Identified in State Board's March 10th Letter</u>

That there have been, and are, problems with the process of preparing the final Permit after adoption by the Regional Board and in the subsequent petition process, is undeniable. The State Board should not, however, compound this sloppiness by allowing these later-arising problems between the Regional and State Boards, which are wholly unrelated to the substantive decision, to cause uncertainty in a validly adopted Permit.

January 2010 Corrections to the May 7, 2009 Permit

The State Board has stated that "[o]n February 23, 2010, the State Water Board staff reviewing the petition became aware of major corrections to the Ventura MS4 Permit that . . . were not reflected in the version of the Ventura Permit under review. Apparently these corrections to the Ventura MS4 [Permit] were made public in January 2010. . . ." (March 10th Letter, at 2.) Yet the corrections made to the Permit reflected only reinstatement of two sections, "subpart 3. Hydromodification (Flow/ Volume/ Duration) Control Criteria, and subpart 4. Water Quality Mitigation Criteria contained in Part 4.E.III – New Development/Redevelopment Performance Criteria," which were "inadvertently omitted when the Order was finalized after the

[May 7, 2009] Board meeting." (Letter from Tracy Egoscue, Regional Board, to Norma Camacho, Ventura County Watershed Protection District, January 28, 2010, at 1.) The existence of this clerical error was communicated to both the Regional Board and State Board by NRDC and Heal the Bay as early as July 2009. We explicitly raised the need to correct the Permit to reinstate these two sections in our response to the Petition, noting that the "final draft of the permit reflects a deletion of the entire remainder of [section E.III] including the hydromodification (E.III.2) . . . provisions and the SUSMP provisions (E.III.3)." (Opposition of NRDC and Heal the Bay to Petition for Review in SWRCB/OCC File A-2023, July 31, 2009 ("Opposition Brief"), at 30 fn. 58.) We pointed out that the Board had made clear its intention during the hearing to replace only section E.III.1 of the Permit, and not all of section E.III:

> Q: Senior Staff Counsel Levy: Pardon me, Chair Lutz and Board Member Marin, I think you misspoke when you said E(3) on pages 8-78, I think you mean (E)(3)(1).
> A: Board Member Marin: E(3)(1).
> A: Vice Chairperson Glickfeld: I'll Second.

(Regional Board Hearing Transcript, May 7, 2009, at 353:7-11; *see* Opposition Brief at 30 fn. 58.)[1] As a result, this correction was known to be necessary by all parties concerned, wholly warranted, and well overdue.

Even putting aside issues surrounding the timing of institutional knowledge of the need for these corrections, the limited issue presented by reinstatement of these sections does not give rise to a need to remand or revisit the entire Permit. Nor should the Regional Board's tardiness in restoring the deleted passages, or that the State Board did not request corrections be made earlier, provide basis for the State Board to decline to review and rule on the Petition now.

Omission of Documents from the Record

The State Board stated that in February, 2010, it "became aware of a significant number of documents that may have been omitted from the administrative record transmitted to the State Water Board." (March 10th Letter, at 2.) This omission could have been discovered significantly earlier had either the State Board or Regional Board acted with greater diligence in examining the record. In fact, the State Board could have facilitated proper review of the administrative record immediately after the Petition was filed, had it granted NRDC and Heal the Bay's reasonable request for a two-week extension of time to respond to the Petition, which we requested specifically on grounds that the record was not yet available for review and because "we believe[d] a thorough evaluation of the record is necessary" to properly review and respond to the Petition. (NRDC and Heal the Bay Letter to Marleigh Wood, State Water Resources Control Board, July 13, 2009.) Instead, the State Board denied this request, and as a result the administrative record was not available for review in this matter until after all briefing on the

[1] NRDC and Heal the Bay additionally contacted both the Regional Board and Counsel for the State Board by phone during the last week of July in order to notify the agencies that the two sections at issue had been accidentally omitted from the final version of the Permit, and spoke with counsel for the Regional Board multiple times regarding this issue between August and October of 2009.

Petition had been completed.[2] That the parties were denied the ability to review the administrative record during briefing, and the State Board did not itself undertake a thorough review of the record until, apparently, months later, leaving itself no time to allow for correction, should not now serve as justification for remanding the Permit to the Regional Board.

Corrected Findings and Other "Alleged Irregularities"

The State Board has additionally stated that "procedural questions" existed early in the State Board's review of the Petition, including a request from the Regional Board to correct a finding in the Permit. (March 10th Letter, at 2.) But rather than relating to substantive changes to the Permit's terms or provisions, the request concerns only a proposal to amend an individual Permit finding to affirm the Regional Board's authority to weigh evidence in the record independently from Staff's recommendations and to effect decisions in that light.[3] (*See* Los Angeles Water Board's Response to Petition for Review of Ventura County Municipal Separate Storm Sewer System Permit and Memorandum of Points and Authorities in Support Thereof, August 3, 2009 ("Regional Board Response"), at 4-5.)

As the Regional Board points out, the Board may reach its own conclusions based on evidence in the record "[n]otwithstanding staff's findings." (Regional Board Response, at 5.) But as we discussed at length in our Opposition Brief, such additional language is not necessary. It is well established that it is the findings and determination of the majority of the Regional Board's members, and not the opinions of Board staff, that are relevant for review of the Regional Board's decision. (*See, e.g. Schneider v. Civil Service Commission of Los Angeles County* (1955) 137 Cal.App.2d 277, 282; Opposition Brief, at 27.) Even without the proposed amended language, the finding discussed in the State Board's March 10th Letter merely demonstrates the complexity of issues that were presented before the Regional Board over the course of the Permit's adoption. (*See* Opposition Brief, at 25-27; 29-30.) Neither the presence of the finding itself nor the Regional Board's request to correct the finding provide reason to remand the entire Permit to the Regional Board.

There is further no justification for the State Board to remand the Permit to the Regional Board on grounds that there were "alleged irregularities in the hearing." (March 10th Letter, at 2.) To begin with, the State Board fully acknowledged that this issue does not represent

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[2] As a further sign of delay, on July 13, 2009, NRDC and Heal the Bay submitted a Public Records Act request to the Regional Board for access to correspondence pertaining to the Permit between the Regional Board and Petitioner organizations. (See Letter from NRDC and Heal the Bay to Stephen Cain, Regional Board, July 13, 2009 (appended by email July 14, 2009).) The requested documents were not made available until October 22, 2009, more than three months after the request was submitted, and two and one-half months after briefing in this matter was completed.

[3] The Finding in question, B.19, which relates to the Permit's requirements for use of low impact development practices, states for example that Board *staff* finds that it may be "infeasible to retain . . . stormwater on site due to site specific conditions." (Permit, at Finding B.19.) It does not purport to be the finding of the Regional Board as a whole.

established fact, but solely a claim that "Petitioners have argued." (*Id*.) NRDC and Heal the Bay have briefed extensively on this claim previously, and provided substantial evidence and citation to the record to demonstrate that the Petitioners were given both proper notice of the Permit's provisions and adequate, or more accurately, ample opportunity for comment. (*See* Opposition Brief, at 7-12; *see also, id.* at 12-16 (discussing provisions as a logical outgrowth of terms in prior Permit drafts).) The claims of procedural irregularities are simply without merit.

Even if the State Board were to believe that the claims advanced by Petitioners deserve further consideration, the correct course of action would be to request that the Regional Board correct the administrative record, then for the State Board to conduct a thorough review of the Permit adoption process, including the events of the adoption hearing, and rule on the Petition. Or, if the State Board believed that the process of adoption was flawed in some specific way, it could offer guidance so that the Regional Board could ensure that this and other permits are noticed and brought for public hearing without resulting in confusion and disagreement over the correct procedure to be followed. Instead, remanding the Permit to the Regional Board based on claims of irregular procedure, absent evidence of procedural misconduct or further instruction as to proper procedure, only invites further confusion.

Conclusion

The events following the Regional Board's adoption of the Permit represent a serious breakdown of public process and, at a minimum, threaten to delay implementation of an overdue and critically necessary means of protection for the public health and welfare, and environment, of Ventura County. In response to these problems, the State Board should request that the Regional Board correct the administrative record, should confirm that it is in receipt of the correct, final version of the Permit, and should then rule on the Petition before it. In the event the State Board resolves, we believe injudiciously, to remand the Permit to the Regional Board, we urge the State Board to narrow the scope of its remand to allow further proceedings on only those issues identified in its March 10th Letter.

Please do not hesitate to contact us should you have any questions regarding this matter.

Sincerely,

David Beckman
Noah Garrison
Natural Resources Defense Council

Mark Gold
Heal the Bay

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

March 30, 2010

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[via U.S. mail only]
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Dear Mssrs. Henderson and Lewis:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN)
LOS ANGELES WATER BOARD: DISMISSAL
SWRCB/OCC FILE A-2023

You filed the above-referenced petition on June 8, 2009, and it was determined to be complete on July 2, 2009. Title 23, California Code of Regulations, section 2050.5, subdivision (b) provides that the State Water Resources Control Board (State Water Board) shall have 270 days in which to review and act on a petition. If formal disposition is not made by the State Water Board within these time limits, the petition is deemed denied. The 270-day period ended on March 29, 2010. Because 270 days has elapsed, your petition is dismissed by operation of law, effective March 29, 2010.

If you should have any questions, please contact Marleigh Wood, Senior Staff Counsel, at (916) 341-5169.

Sincerely,

Michael A.M. Lauffer
Chief Counsel

cc: See next page

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(Continued next page)

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Interested Persons List

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April 20, 2010

CLIENT/MATTER NUMBER
096451-0101

VIA E-MAIL AND U.S. MAIL

Charles Hoppin
Chairman
State Water Resources Control Board
1001 I Street
22nd Floor
Sacramento, California 95812

Re: SWRCB/OCC File A-2023: Request to Vacate and Formally Remand Order No. R4-2009-0057

Dear Mr. Chairman:

Our clients, the Building Industry Legal Defense Foundation et al. ("Petitioners"), are the petitioners concerning the above-referenced file. On March 10, 2010, Petitioners received a letter from the Office of Chief Counsel's Michael Lauffer requesting (i) that the Los Angeles Regional Water Quality Control Board (the "Regional Board") agree to a *voluntary remand* of Order No. R4-2009-0057 (the Ventura MS4 permit, or the "Order") without direction, and (ii) that Petitioners agree to place their petition challenging the Order in abeyance.

On March 18, 2010, Petitioners responded to the request, noting that Mr. Lauffer's suggestion that the Regional Board could receive a voluntary remand without direction is not consistent with the regulations that govern the State Water Resources Control Board (the "State Board"). Specifically, Title 23, section 2052, of the California Code of Regulations permits a remand from the State Board to the Regional Board only if the State Board "[d]irect[s] the regional board to take appropriate action."

Petitioners' March 18th letter also stated that Petitioners would be willing to accept an informal and expedient resolution of the petition. Specifically, Petitioners offered to stipulate to a withdrawal of their petition if the Regional Board would stipulate that it will stay the Planning and Land Development Program requirements of the Order, Part 4(E), and begin the permit review process over again.

Petitioners received no response to their offer to stipulate to an informal resolution of the petition. Instead, Petitioners eventually received a notification dated March 30, 2010 from Mr. Lauffer stating that – because of California Code of Regulations Title 23, section 2050.5, subsection (b) and the passage of 270 days (from the date on which the petition was determined to be complete) without any formal resolution of the petition by the State Board – "your petition is dismissed by operation of law, effective March 29, 2010."

California Code of Regulations Title 23, section 2050.5, provides that, upon receipt of a petition, the State Board shall review and act on the petition within 270 days unless a hearing is held by the State Board, in which case the State Board shall act on the petition within 330 days (these time limits may be extended for a period of no more than 60 days with written agreement from the petitioner, but such agreement was not reached in this matter). If formal disposition is not made by the State Board within the prescribed time limits, the petition is deemed denied.

California Code of Regulations Title 23, section 2052 provides that the State Board may take, within the time limits indicated above, one of five potential actions in response to a petition: the State Board may:

(i) refuse to review the Regional Board's action or failure to act if the petition fails to raise any substantial issues,

(ii) deny the petition upon a finding that the Regional Board's action or failure to act was appropriate or proper,

(iii) set aside the Regional Board order,

(iv) modify the Regional Board order, or

(v) direct the Regional Board to take appropriate action.

Section 13320 of the Water Code, pursuant to which the regulations were promulgated, similarly provides that the State Board may find that the Regional Board's action or inaction was appropriate and proper – a finding that was not and could not be made here legitimately. Upon a State Board finding that the action or inaction was inappropriate or improper, however, the State Board's options are once again circumscribed. The State Board may (i) direct that the appropriate action be taken by the Regional Board, (ii) refer the matter to any other state agency having jurisdiction, (iii) take the appropriate action itself, or (iv) take any combination of those actions. The relevant statute and regulations *do not allow* the State Board to remand the matter back to the Regional Board "voluntarily" without any direction concerning how to correct the Regional Board's actions.

In addition to these limitations on the State Board itself, the relevant regulations specify that the role of the State Board's staff is limited. California Code of Regulations Title 23, section 2052, subsection (b) specifies that the State Board's executive director may act for the State Board only pursuant to Title 23, section 2052, subsection (a)(1), where the petition "fails to raise substantial issues that are appropriate for review." By implication, ***none*** of the potential actions that the State Board may take pursuant to Title 23, section 2052, subsection (a)(2) may be taken by the executive director or staff. In particular, a "voluntary remand" (with or without appropriate direction to the Regional Board) seemingly is not an action that the executive director or staff may take under the statute or regulations.

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Here, the State Board's inaction and the actions and inactions of its staff when dismissing the petition have left Petitioners in an unfortunate legal position concerning the Order. Specifically, because the State Board's staff effectively dismissed the petition without any directions to the Regional Board, Petitioners have will no choice but to proceed to superior court no later than April 28, 2010, or forever lose their legal right to challenge the Order, unless the State Board acts *very quickly* to address the matter. In short, Petitioners cannot risk losing – on the hope that the Regional Board may choose to find its own direction forward – their legal right to challenge the Order in court.

Accordingly, this letter is to notify the State Board that – unless the State Board can act very swiftly to change its position – Petitioners must regrettably file a petition for writ of mandate in superior court no later than April 28, 2010, outlining both the procedural and substantive deficiencies in the Order and – as a separate cause of action – the subsequent actions and inaction of the State Board.

Petitioners brought their petition to the State Board in the first instance because the Order was substantively unacceptable and the process by which it arose was unfair and unlawful. Specifically, the Regional Board publicized a tentative permit that was vastly different from the Order as it was ultimately approved. In particular, the tentative permit reflected no requirement that storm water must be captured and retained on site at any future development or redevelopment within Ventura County, rather than allowed to flow from the site in a manner that would mimic predevelopment hydrology. At the adoption hearing concerning the tentative permit, the Regional Board rejected its staff's recommendations and adopted verbatim different permit requirements that had been negotiated in a secret side agreement. This side agreement, which should have been outright rejected on substantive legal, policy, technical, scientific and evidentiary grounds, was never publicly circulated or vetted. Given that Petitioners were focused on the duly-publicized tentative permit, they were unable to assemble and present any arguments and evidence against the surprising side agreement. Following the adoption hearing on May 7, 2009, Petitioners requested that the Regional Board recirculate the previously uncirculated provisions of the Order, but that request was refused.

Apart from the procedural violations that led to the Order, Petitioners had hoped that the State Board would review the record, take evidence if needed, and modify the Order's most unacceptable substantive provisions. In particular, Petitioners hoped that the State Board would reverse the Regional Board's *policy preference* for retaining storm water on each parcel, regardless of the parcel's natural hydrology or context. The petition sets forth briefly but clearly the legal and policy reasons why the Order should be set aside or modified. Unfortunately, Petitioners suspect that the State Board's staff never even presented the petition to the State Board, such that meaningful consideration by the State Board was never possible.

Petitioners resorted to petitioning the State Board as a necessary step in protecting their legal rights vis-à-vis the Order. Petitioners had hoped that, by doing so, eventual recourse to the court system would not be necessary. Unless the State Board is able to address the *status quo*

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before April 28, 2010, Petitioners have no choice but to process to the court with a writ petition. When doing so, Petitioners will be forced to complain not only about the Order and its derivation at the Regional Board, but also about the discrete failure of the State Board to address the petition in accordance with the statutory and regulatory framework that governs the State Board. Petitioners are thus forced to incur further attorneys' fees and costs to challenge the Order in court, when these could have been avoided or minimized if the State Board had met its responsibilities.

Therefore, we respectfully ask that the State Board inform petitioners, through the undersigned, whether the State Board might yet act before April 28th so that Petitioner may avoid proceeding to court. Unless such action is forthcoming, Petitioners must and will proceed accordingly. Thank you very much for your timely attention and response.

Very truly yours,

S. Wayne Rosenbaum

cc: Andrew Henderson
Elizabeth Cason

State Water Resources Control Board

Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

April 21, 2010

[via U.S. mail on 4/22/2010 & email]
Wayne S. Rosenbaum, Esq.
Foley & Lardner LLP
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Dear Mr. Rosenbaum:

PETITION OF BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION, CONSTRUCTION INDUSTRY COALITION ON WATER QUALITY, AND BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2009-0057 [NPDES NO. CAS004002] FOR STORM WATER (WET WEATHER) AND NON-STORM WATER (DRY WEATHER) DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS WITHIN THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES THEREIN), LOS ANGELES WATER BOARD: RESPONSE TO APRIL 20, 2010 LETTER
SWRCB/OCC FILE A-2023

The Chair of the State Water Resources Control Board (State Water Board) asked that I respond to your April 20, 2010 letter concerning the above petition. On March 29, 2010, Petition A-2023 was dismissed by operation of law. As a result, there is presently no petition before the State Water Board for the board to consider. Further, the State Water Board will not be exercising own motion authority to review the underlying Order No. R4-2009-0057. (See, Wat. Code, § 13320, subd. (a).)

In your letter to Chair Hoppin, you make much of supposedly improper actions by the State Water Board. To be clear, the State Water Board did not remand Order No. R4-2009-0057. My letter of March 10, 2010, identified a path whereby the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) could attempt to address concerns raised in your petition and your clients would have an opportunity to present argument (and perhaps evidence) to the regional board. It was not an action by the State Water Board pursuant to Water Code section 13320 or California Code of Regulations, title 23, section 2052, and in fact, it was not predicated on any subsequent action of the State Water Board—other than perhaps placing Petition A-2023 into abeyance if your clients were amenable to it. My letter noted that the petition would be dismissed by operation of law on March 29, 2010, if your client did not provide an extension of the review period (see Cal. Code Regs., tit. 23, 2050.5, subd. (b)) or request the petition be placed in abeyance (*id.*, subd. (d)). Neither of those things occurred. As a result, the petition was dismissed by operation of law.

At this point, any legal action you have would be against the Los Angeles Water Board. (Wat. Code, § 13330, subd. (b).) The State Water Board's denial of the petition, which in this case occurred pursuant to a regulation, is an unreviewable exercise of discretion. (*People v. Barry*

(1987) 194 Cal.App.3d 158; *Johnson v. State Water Resources Control Board* (2004) 123 Cal.App.4th 1107.)

I understand that the Los Angeles Water Board has scheduled Order No. R4-2009-0057 for further consideration at its July 18, 2010 meeting. Rather than pursue a lawsuit against the Los Angeles Water Board at this time (as your letter threatens), I would encourage you and your clients to avail yourselves of the administrative proceeding the Los Angeles Water Board has indicated it will schedule. If your client is aggrieved by any action or failure to act by the Los Angeles Water Board on that date, you may petition that to the State Water Board.

If you should have any questions regarding this matter, please contact me at (916) 341-5183.

Sincerely,

Michael A.M. Lauffer
Chief Counsel

cc: Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95814

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

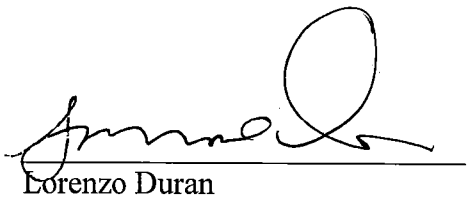
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 29, 2017, I served the:

- **SWRCB Administrative Record for the Petition on the 2009 Venture County MS4 Permit filed August 23, 2017**
- **LARWQCB Administrative Record for Los Angeles Water Board Record for the 2001 Los Angeles County MS4 Permit filed August 23, 2017**

  California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108, 11-TC-01.
  County of Ventura and Ventura County Watershed Protection District, Co-Claimants

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 29, 2017 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/9/17

Claim Number: 11-TC-01

Matter: California Regional Water Quality Control Board, Los Angeles Region, Order No. R4-2010-0108

Claimants: County of Ventura
Ventura County Watershed Protection District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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