



Information Item

Date: August 30, 2012

To: Mayor and City Council
From: Dean Kubani, Director, Office of Sustainability and the Environment
Subject: Los Angeles County NPDES MS4 Permit Update Process

Introduction

This report provides information regarding the update and approval process for the National Pollution Discharge Elimination System (NPDES) Municipal Separate Sanitary Storm Sewer (MS4) permit for Los Angeles County, and transmits City staff comments regarding the draft permit.

Background

The State Water Resources Control Board, through its Regional Water Quality Control Boards, is responsible for ensuring that counties, cities and other dischargers meet the requirements of the Clean Water Act. To enforce clean water at the local level, municipalities and Los Angeles County (County) unincorporated areas must obtain a National Pollutant Discharge Elimination System (NPDES) discharge permit from the Los Angeles Regional Water Quality Control Board (RWQCB). Under the respective NPDES permits, cities and County unincorporated areas are all responsible for cleaning up polluted waters in their jurisdictions.

In 1972, when the Clean Water Act first established the NPDES permit program, most efforts at improving water quality focused on regulating pollutant discharges from known end-of-pipe “point sources” (pollutants easily traced to specific, discrete sources). However, the 1987 amendments to the Clean Water Act extended the NPDES program to encompass the much more complex and difficult to control “non-point source”

pollution found in stormwater and dry weather runoff. In 1987 the NPDES permit began to regulate non-point source runoff to Municipal Separate Sanitary Storm Sewer (MS4 or “storm drain”) systems, and since that time non-point source regulations under the NPDES permit program have been significantly revised and expanded.

Since 1996 the cities and County unincorporated areas have been covered under one county-wide NPDES permit. The most recent permit was issued in 2001 (and later amended in 2006) with LA County Public Works as the principal permittee and each of the cities in the County as co-permittees. In 2011 the RWQCB began the process of updating and reissuing the NPDES permit and indicated that the new permit would be issued to all parties as co-permittees with no agency designated as a principal permittee. The RWQCB has held a series of “workshops” over the past several months to present and receive preliminary input on various proposed permit requirements. The complete draft NPDES permit was issued for review on June 7, 2012 for a 45-day public comment period. Public comments were required to be submitted by July 23, 2012 at 12:00 noon. The RWQCB is currently scheduled to vote on the draft permit at its board meeting on October 4-5, 2012.

Discussion

City staff has been closely monitoring the NPDES permit update process and have been participating in workshops and discussions with RWQCB staff and staff from other cities since the process began last year. In January 2012 Santa Monica joined the Los Angeles Permit Group (LAPG), a consortium of municipalities formed to provide a unified voice in general regulatory discussions with the RWQCB and to ensure non-stormwater and stormwater are managed properly, both for flood control and water quality protection. At that time staff determined that it would be in Santa Monica’s best interest to have a seat at the table with other cities in discussions with the RWQCB about the permit due to the important water quality issues being discussed as well as the potential fiscal impacts related to permit compliance. The group began in 2007 as the Los Angeles Stormwater Quality Partnership, when 8 cities representing areas

throughout Los Angeles County decided to partner to find opportunities to collaborate with other municipalities and the RWQCB. This partnership expanded in 2011 to form LAPG. LAPG members currently include 62 of the 88 cities in LA County that are subject to the NPDES permit. A list of LAPG members is included as Attachment A.

As noted above the draft NPDES permit was issued on June 7, 2012 for a 45-day comment period. Omitting weekends and holidays this provided an effective comment period of 31 working days to review a complex 123 page permit with over 350 additional pages of appendices. Staff submitted a request for a 180-day extension of the review and comment period to allow for a detailed review of the draft permit, to fully evaluate resource needs required by new permit provisions, to determine the fiscal and organizational impacts on City services, to complete a legal review, and to present information and obtain feedback from City Council prior to finalizing and submitting written comments. The RWQCB denied the extension request. A copy of the extension request is included as Attachment B.

Staff from the Public Works department, the Office of Sustainability and the Environment, and the City Attorney's Office conducted a preliminary review of the draft permit, and prepared and submitted comments to the RWQCB by the July 23, 2012 deadline. The cover letter and comments are included with this report as Attachment C, submitted in two parts. It is clear that if the draft NPDES permit is adopted as currently written it will require a significant increase in staff and fiscal resources by the City. Staff was unable to complete a detailed economic analysis of the permit requirements during the abbreviated review and comment period, but will return to Council with that information when it has been completed. Some of staff's more significant concerns with the draft permit are summarized below:

- **Compliance with the Draft Permit is Likely Not Technically Achievable or Economically Feasible** – It is not clear that any city can comply with the numeric water quality limits specified in the draft permit. City actions to improve

water quality, generally termed best management practices or BMPs, are multifaceted. They include regular street sweeping and litter reduction efforts, bans on overspray and runoff, requirements that developments capture and treat stormwater runoff, bans on plastic bags and Styrofoam containers, installation of various filters, screens and water treatment systems throughout the storm drain system, diversion of stormwater to the sanitary sewer system, and many other policy and programmatic efforts. However, due to the diverse and dispersed nature of runoff and pollutant sources, no level of BMPs can ensure that numeric and water quality standards will be met. A case in point is the Santa Monica Pier Storm Drain Improvement project. This project performed major repairs to the existing Pier Storm Drain diversion to the sanitary sewer for flows that exceed the capacity of the Santa Monica Urban Runoff Recycling Facility, and replaced the decrepit and deficient storm drain under the Pier to eliminate dry weather runoff flows onto the beach. The project also provided bird exclusion netting beneath the Pier to address that source of bacteria to the area. However, after costly completion of the project's many measures, water quality standards are still not being consistently met around and beneath the Pier. The City has invested additional funds to help determine causes of the exceedences and potential remedies which are likely from natural environmental conditions and not something the City can remedy. This situation illustrates the problem with numeric water quality limits included in the draft permit. There is substantial debate among researchers as to whether numeric limits are a realistic approach to achieving water quality improvements. Relying on these limits to measure compliance creates a significant legal and financial burden on permittees when compliance may not in fact even be possible.

- **Draft Permit Immediately Exposes the City to Enforcement Actions and Lawsuits** – Although Santa Monica is arguably a leader in addressing urban runoff and protecting water quality in the Los Angeles region, if the permit takes effect as written, the City will be immediately considered out of compliance,

subject to fines and exposed to third party lawsuits. The current draft permit does not take into account the significant actions undertaken by the City and other cities to achieve compliance.

- **Securing Fiscal Resources Required to Meet Compliance with the New Permit are not within the City's Direct Control** – As noted above, the 31 business day review period provided insufficient time for staff to complete a thorough economic analysis of the permit's new requirements. However, it is clear that the robust new requirements will result in significantly increased costs to all permittees. While staff is still assessing potential resource requirements and impacts, additional fees and/or taxes are likely necessary to fund the proposed RWQCB mandates. If so, the terms of California's Proposition 218 require the approval of voters prior to the creation or increase of the taxes or fees that would be required to pay for these costs. In the likely event of voter rejection of increased taxes during difficult economic times (and in Santa Monica, residents and property owners already pay 3 stormwater-related fees and taxes), permittees will be unable to identify sustainable sources of funding necessary to meet the permit requirements without imposing significant cuts to other vital community services.

Staff will continue to monitor the NPDES MS4 permit approval process as it proceeds and will keep the City Council informed as additional information becomes available.

Prepared By: Dean Kubani

Attachment A: List of Los Angeles Permit Group Members

Attachment B: Request for Extension

Attachment C: Santa Monica Cover Letter and Comments on Draft NPDES Permit

LA Permit Group Members

City of Agoura Hills
City of Alhambra
City of Arcadia
City of Artesia
City of Azusa
City of Baldwin Park
City of Bell
City of Bell Gardens
City of Bellflower
City of Beverly Hills
City of Bradbury
City of Burbank
City of Calabasas
City of Carson
City of Claremont
City of Commerce
City of Covina
City of Culver City
City of Diamond Bar
City of Duarte
City of El Monte

City of Gardena
City of Glendale
City of Glendora
City of Hawthorne
City of Hermosa Beach
City of Hidden Hills
City of Huntington Park
City of Industry
City of Inglewood
City of La Verne
City of Lakewood
City of Lawndale
City of Los Angeles
City of Lynwood
City of Malibu
City of Manhattan Beach
City of Monrovia
City of Montebello
City of Monterey Park
City of Paramount
City of Pasadena

City of Pico Rivera
City of Pomona
City of Redondo Beach
City of Rolling Hills
City of Rolling Hills Estates
City of Rosemead
City of San Dimas
City of San Gabriel
City of San Marino
City of Santa Clarita
City of Santa Fe Springs
City of Santa Monica
City of Sierra Madre
City of South El Monte
City of South Gate
City of Torrance
City of Vernon
City of West Covina
City of West Hollywood
City of Westlake Village



Office of the City Manager
1685 Main Street
PO Box 2200
Santa Monica, California 90407-2200

July 10, 2012

Maria Mehranian, Chairperson
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th St., Suite 200
Los Angeles, CA 90013

SUBJECT: Comment Period for Draft NPDES Permit for MS4 Discharges

Honorable Chairperson Mehranian:

The City of Santa Monica is in receipt of the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit for MS4 Discharges and of the draft permit. This draft permit is over 500 pages long and incorporates provisions for 33 TMDLs and implementation requirements, new low impact development requirements and extensive new requirements for water quality monitoring. Despite the comprehensiveness and complexity of this permit document, permittees have been given only 45 days to review and provide written comments. With this letter we respectfully request the Regional Board to extend the review and comment period to provide permittees sufficient time to evaluate the Draft Permit.

The City of Santa Monica is appreciative of the efforts the Board and Staff have taken to review certain aspects of the Permit with permittees in workshops; however, many of the Draft Permit provisions contain substantial changes from previous versions, or contain new sections that had not been previously seen by permittees. Seeing the permit in its entirety and having the opportunity to understand how each of the sections and programs work together is essential for permittees to fully understand the permit provisions and to prepare comments.

In order to develop and provide relevant and meaningful comments, each permittee must first:

- Read and evaluate the 500+ page permit in light of current and future compliance efforts, including policies, code requirements, BMPs, monitoring and enforcement
- Evaluate the resource needs to comply with the permit moving forward
- Determine the fiscal and organizational impacts on city services
- Complete legal review and draft comments
- Present information to and gather feedback from City Council (which requires at least 30-60 days in most cities)
- Prepare final written comments

Additionally, emphasis on coordination of comments among cities has been called out in the Notice of Opportunity for Public Comment and Notice of Public Hearing for the Draft NPDES Permit. This process is essential because many of the permit provisions are intended for permittees to work together on a watershed (or sub-watershed) scale. In order to fully understand how these provisions will work on a watershed scale, it is necessary that permittees (staff and elected officials) be allowed adequate time to fully understand the permit, coordinate and prepare comments. However, the current 45-day comment period does not allow sufficient time for cities to adequately coordinate responses.

For the reasons noted above the City of Santa Monica respectfully requests the comment period be extended by **180 working days** to allow for a thorough review and comment on the Draft NPDES Permit prior to the Adoption Hearing. Thank you for your consideration of this request.

Sincerely,



Rod Gould
City Manager

cc: Charles Stringer, Vice Chairperson
Francine Diamond, Boardmember
Mary Ann Lutz, Boardmember
Madelyn Glickfield, Boardmember
Maria Camacho, Board member
Irma Camacho, Boardmember
Lawrence Yee, Boardmember
Samuel Unger, Executive Officer



City of Santa Monica
1685 Main Street, Room 209
Santa Monica, CA 90401

July 23, 2012

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

RE: COMMENTS ON DRAFT NPDES PERMIT: TENTATIVE ORDER NO. R4-2012-XXX WASTE DISCHARGE REQUIREMENTS FOR MS4 DISCHARGES WITHIN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

Dear Mr. Ridgeway:

The City of Santa Monica (City) appreciates the opportunity to provide comments and recommendations to the Los Angeles Regional Water Quality Control Board (Board) on the draft tentative order for MS4 discharges in the Los Angeles region.

As you know, over the years the City has been a strong and consistent partner with the Board on many issues. The City and the Board share a long held position that discharges need to be monitored and controlled. Regionally, the City has been a leader in dealing with waste discharges. The City continues to believe that waste discharges need to be reduced to preserve Santa Monica Bay and other water resources.

Although the City is supportive of the many provisions that provide for a strong and effective stormwater discharge permit, the City's disagrees that allowing only 31 business days to review a complete 500-page draft of the permit is adequate time for a responsible public agency to perform a comprehensive evaluation of the requirements, identify the interactions between the different provisions, assess the financial and organizational impacts, determine the legal exposures, certify our legal authority to enforce the requirements, present findings and obtain direction from our elected officials, and finally formulate a complete vetted collection of comments.

Expecting this to be accomplished in such a short time frame is unreasonable and we urge the Board to reconsider our earlier request for a 180-day time extension to the review process so as to ensure a complete and thoughtful review of the proposed permit provisions.

In the interim, we have listed our comments to date in the attached Exhibit A. This list is not complete given the short review time. The City reserves the right to include other comments as it further reviews the proposed NPDES permit. Additionally, the City of Santa Monica supports many of the draft permit comments as submitted to date by the LA Permit Group (LAPG) and those that are forthcoming in the LAPG comment letter. They are incorporated into our comments by this reference.

The City highlights its main concerns as follows:

The Receiving Water Limitation provisions expose the City to counterproductive third party lawsuits and Board enforcement actions.

The City of Santa Monica prides itself as a steward for environmental protection engaging in sustainable practices to protect our water bodies. The City has long been touted for its implementation of a proactive and pioneering storm water management program. The requirements in our urban runoff ordinance have been identified as some of the most aggressive in the region. In addition, a City Watershed Management Plan was established in 2006 and implementation of the many runoff mitigation strategies is well underway. Ordinances have been implemented to ban plastic bags, smoking in public places and Styrofoam food containers in an effort to reduce trash in storm water discharges. City residents have twice voted to impose parcel taxes to fund these programs and projects that safeguard our water resources.

In its current form, the NPDES permit does not distinguish between those permittees that do their part to achieve improved water quality and those that do not. Despite the many proactive steps undertaken and the vast improvements achieved, our City is considered nonetheless out of permit compliance, as is evident in the Notices of Violation that were issued to the City by the Board on March 4, 2008 and October 15, 2009. The City believes that a more appropriate approach is for the Board to take into account the efforts actually undertaken and their effectiveness. Otherwise it appears that the Board has predetermined compliance without regard to actual events. Such a potential raises serious fundamental fairness and due process concerns.

As the City understands the proposed process, the draft permit will continue to expose the City to these enforcement actions and potential 3rd party lawsuits almost without regard to the actions of the City. It establishes the specter of expected non-compliance regardless of the level of effort exerted by the permittees.

Implementation of the Watershed Management Programs (WMP) promulgated in the permit requires investment of public resources, but will not guarantee permit compliance.

The science to support the efficacy of Best Management Practices (BMP) in achieving a numeric water quality objective does not currently exist. However, the WMP and the adaptive management process used to implement the WMP will help create the data and the science needed to establish effective BMPs for specific water quality objectives.

Therefore, the City fully supports the implementation of a Watershed Management Program. It represents a proactive approach to improving water quality in our receiving water bodies and protecting their beneficial uses and the City is prepared to allocate its resources to the implementation of a WMP that is both reviewed and approved by the Board.

However, with the current permit language, a permittee could fully implement a Board sanctioned WMP yet still be held in violation of the permit if any of the numeric limits were not met either in the receiving water limitations or the final Waste Load Allocations for a TMDL. This does not present an incentive for the majority of the permittees to engage in a WMP and be part of a potential solution to achieving the desired water quality. Instead, the proposed provisions may encourage some permittees to do the absolute minimum required by the permit and hope for the best.

The Timeline for preparation of the Watershed Management Program is unreasonable.

The WMP is a significant exercise involving multiple agencies and jurisdictions. The effort will most likely require City Council action, execution of interagency memoranda of agreement, funding allocation, studies and data collection, technical workshops, public participation, drafting and multiple reviews of the WMP, obtaining agency approvals and other time intensive tasks. It is unreasonable to require a permittee to complete these tasks within a 12 month period and yet expect a comprehensive, well thought out program. A more realistic timeframe to submit a draft WMP is 24 months.

Securing fiscal resources necessary to meet the requirements of the permit is not within direct control of the City.

The 31 business day review period is insufficient time for our staff to complete anything approaching a thorough economic analysis of the permit requirements. However, it is clear that the robust permit requirements will result in significantly increased costs to the permittees. The terms of California's Proposition 218 require the approval of voters prior to the creation or increase of the taxes or fees that would be required to pay for these costs. In the likely event of voter rejection of increased taxes during difficult economic times, permittees will be unable to identify sustainable sources of funding necessary to meet the permit requirements without imposing significant cuts to vital community services.

Changing the design storm criteria to the greater of the ¾" storm and the 85th percentile storm creates unnecessary need for additional evaluations and results in added costs for the developers.

The City's urban runoff ordinance designates the ¾" storm as its design criteria. Currently, over 1,600 structural stormwater BMP's have been installed within our City using this design criteria. All NPDES permits in California deem the ¾" storm to be equivalent to the 85th percentile storm. The City is concerned that requiring evaluations of the larger of the two storms will result in unnecessary additional costs to an already heavily regulated and economically impacted development industry and recommends retaining the two design storms as equivalent design criteria.

Numeric limits for final TMDL waste load allocations counteract the effectiveness of the Watershed Management Program to attain improved water quality.

There currently is no proven solution to attaining numeric limits. The iterative approach of BMP implementation as described in the WMP is a rational process to work towards attaining numeric limits. The permit does not allow for final TMDL compliance by way of fully implementing an approved WMP and this contradicts the intent of the WMP and subsequently does little to improve water quality. Since permittees would invest substantial time, effort and fiscal resources to implement comprehensive WMPs, it would be sensible for the Board to provide reasonable assurance that an approved WMP that is fully implemented will constitute final TMDL compliance.

Conclusion

In summary, the City is concerned about the real world impact of the draft permit. It provides permittees with no feasible means to achieve compliance. As a result, it will likely redirect stakeholder attention from water quality improvement towards the courtroom. On the one hand, it empowers third parties to file unnecessary lawsuits against the permittees, including those engaging in good faith efforts to improve water quality. On the other, its uncompromising approach all but pushes permittees to challenge the legitimacy of some of the permit provisions. A permit scheme that potentially provokes this type of behavior does little to attain water quality improvement. As currently drafted, the permit may ironically redirect limited public resources away from environmental compliance and toward litigation. The City believes that such an outcome would be a lost opportunity, especially since the scarce resources would be better dedicated to the implementation of water protection activities.

The City of Santa Monica has repeatedly demonstrated that it is a willing and committed partner of the US Environmental Protection Agency, the LA Regional Water Quality Control Board, and the non-government environmental organizations in protecting our waters from pollution. Our common goal can be achieved by the implementation of a discharge permit with practical and attainable compliance requirements that encourage dischargers to continuously implement, evaluate and enhance different runoff mitigation strategies in an effort to achieve

water quality objectives. Such a permit will promote the cooperation and mobilize the expertise of all stakeholders in identifying effective BMP's and solutions to our region's water quality problems.

The Board is currently in a position to establish a true solution oriented permit and it has taken the necessary initial steps to do so with the inception of the WMP. Issuing a permit that includes implementation of the WMP as a compliance option presents a unique opportunity for stakeholders to establish the science and technology that will support the effectiveness of BMP's to meet our water quality objectives. The City of Santa Monica encourages the Board to seize this opportunity.

Thank you for the opportunity to comment on the draft order. If you have any questions, please feel free to contact me or our Watershed Program Manager, Rick Valte, at (310) 458-8234.

Sincerely,

Rod Gould
City Manager

Encl. Exhibit A – detailed comments

Attachment C
EXHIBIT A

Page	Section	Excerpt	Question / Comment
III Discharge Prohibitions			
31	III.A.5	Permittee shall not be found in violation ...	We request that the board confirm that this is regulatory relief from exceedances due to potable water discharge.
IV Effluent Limitations and Discharge Specifications			
37	A.1.	Technology based effluent limitations: reduce pollutants to the MEP	Assume this does not conflict with A.2. Water quality-based limits (WQBELs) for when there is a TMDL numerical standard. But when there is no such numerical standard for a pollutant, then if we are doing BMPs, are we safe from any Board or 3rd party lawsuit? Do Basin Plan standards supersede BMP MEP and follow the WQBELs?
V.A Receiving Water Limitations			
37	V.A.1 & A.2	... violation of RWL are prohibited. ... shall not cause condition of nuisance.	These provisions expose the permittees to unnecessary and counterproductive third party lawsuits which do nothing to improve water quality. We request clarification from the Board why this is necessary.
37	A.2	... shall not cause condition of nuisance.	Request the Board to define "nuisance" for the purposes of this permit.
38	V.A.3.a	... revise the storm water management program ...	Do we need to submit a formal revised plan document or do we document the revisions internally? What about the implementation schedule?
VI.A Standard Provisions			
39	xi.	...require that BMPs properly operated and maintained	Not enough time given the city to complete this within the given timeframe. May need to update the runoff ordinance to have explicit language of this requirement of all property owners. Need our CAO to review and agree to needed ordinance changes to comply with permit. Probably other changes are needed, and this will take months.

Attachment C
EXHIBIT A

40	VI.A.2.b	... certified by its legal counsel ...	We recommend that the board provide additional review time of the draft permit to allow legal council to review local ordinances and other means of enforcing the permit requirements. We request an additional 180 days.
40	VI.A.3.a	... exercise full authority to secure fiscal resources ...	Securing fiscal resources is not within full control of the local agency. We request clarification from the Board how this provision is feasible when Proposition 218 precludes local agencies from assessing new fees and taxes without voter approval.
40	A.3.c.	... shall conduct a fiscal analysis of the annual cost . . .	This task requires staff time away from other tasks; or consultant, e.g. cash from completely encumbered budget or pay for this analysis with funds normally used to install BMPs; what if analysis shows a city doesn't have the cash to comply? Will voters pass a new tax?

VI.B	Monitoring & Reporting Provisions
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E-17	VIII.B.1.a	... storm water discharges shall be monitored a minimum of three times per year	There is no evidence that the current two times a year sampling regimen is not providing valid characteristic data. Additional costs of analyzing all the new analytes and labor associated with adding another round of sampling is unnecessary. Recommend retaining current two times a year sampling regimen.
E-5, E-19	III. F.2, VIII.C.2	tentative permit states grab samples are prohibited and promotes composite sampling.	No evidence that all the many years of grab samples collected for storm water to date were in any way not valid or characteristic. Further, the extreme variability in storm water discharges (turbulence, entrained solids, depth, flow velocity etc.) makes the use of composite sampling equipment impractical and infeasible, and not cost effective.

Attachment C
EXHIBIT A

VI.C		Watershed Management Plan	
45	VI.C.1.b	Participation in a WMP is voluntary ...	Will the Board provide a template to which all WMPs should be tailored?
46	Table 9	Draft in 12 months	This is not enough time to coordinate multiple agencies, MOU/MOA, Council approvals, prepare draft, etc. We recommend that the Board provide a 24 month timeline to submit a draft WMP.
46	Table 9	Submit draft plan to Regional Water Board ...	reference in Part column should be VI.C.2.c, not VI.C.2.b.
47	Table 9	Submit final plan to Regional Water Board ...	reference in 'Part' column should not be VI.C.2.c, the latter refers to draft plan, not final plan. Perhaps an additional subsection "e" describing the final plan (due in 3 months) is missing under VI.C.2?
47	Table 9	Begin implementation ...	Due date column states upon submittal of final plan; VI.C.4 states upon approval of the plan. Does this mean that submittal of final plan constitutes approval by Regional Water Board EO?
47	2.d.	... do not elect to develop WMP . .	City requires more time to compare the costs of doing a WMP with other Permittees vs. going alone and complying with Part VI.E.2.d.i in lieu of a WMP. Might be cheaper to do latter but do not know unless we do an economic analysis. The permit is not clear who has to do this analysis; assume the city, and this will require staff time, e.g. cost.
47	3.a.i	. . . Shall identify water quality priorities Include an evaluation of existing water quality conditions, characterize storm water	New requirement. New cost. The city has to do this. Request the Board to tell us how a priority is defined and why this is required if the priorities are the WQBELs and receiving water limits. Seems like duplicative work and extra cost. City believes that the Board should do evaluation and characterization, and inform the city of why this is necessary.

Attachment C
EXHIBIT A

48	3.a.iii.(1)	Source Assessment	<p>New requirement. New costs. City requests that the Board identify known and suspected pollutant sources, or inform the City why it needs to do it. Request the Board to inform the city if a report to the Board is required. Request Board to define "Findings." The City already manages its stormwater program and reports in annual report. These appear to be new requirements to report on. Request the Board to define what is a watershed model, and validate why the city has to do this and what the report should contain. City requests a template.</p>
49	3.a.iv.	Prioritization . . . Issues will be prioritized and sequenced . . . Other Receiving Water Considerations . . .	<p>(1) Request Board to define or explain the meaning of prioritizing and sequencing of issue, and why the Board is asking the City to do this and not the Board do. The city does not know if it prioritizes issues that the Board will agree to them. (2) City requests that the Board inform the city what data it needs to use for controlling pollutants as described in this section. The section is not clear on what the city has to do.</p>
48	VI.C.3.a.ii.(2)	... Pollutants for which data indicate water quality impairment in the receiving water ...	<p>Does this refer to pollutants of concern in the 303(d) list for which TMDL's will not be established, i.e. "TMDL Requirement Status C"?</p>
50	3.b.2.	Implement controls necessary to achieve all limitations . . .	<p>Board should inform city when this is due. If a city does not have enough funds to implement controls, there will be a long process to get voter approval, and voters may not pass new fees. A city does not know what controls are necessary without time to plan, test, and monitor over a specific time period, which is what the timeline follows for the Bay Bacterial TMDL. Would seem that a city will be out of compliance very soon into the permit if not as soon as the permit is executed.</p>

Attachment C
EXHIBIT A

51	iv.2, 3	Permittees identify . . . Permittees compile	<p>New requirement. New costs. City has to identify discharges and compile control measures into what? Request that the Board inform city of what document is required. Iv.3.c. refers to "the plan." Board needs to define this plan. It is not described in permit. Board should provide template.</p>
52	iv.4, 5	Each plan shall include . . . Permittees shall conduct Analysis . . .	<p>New requirement. New costs. City requests that the Board define and describe what this Plan is. City has to ID BMPs, public and private; has to document each with lots of statistics; has to do a quantitative analysis, and modeling to prove BMPs will work. The city did this for Bacterial TMDL at great expense and dramatically increased the cost of compliance with no confirmed environmental improvement. Models are known to be inaccurate and not a reflection of what actually happens, vis-a-vis water quality. Installing BMPs, testing them, tracking improvements and failures, and changing the BMP program, without penalties and lawsuits, the iterative process is proven to work.</p>
52-53	3.c.	Compliance Schedule	<p>New requirement. New cost. Staff time and resources to gather all the required data to develop and then follow the schedule, milestones, deadlines. City requests a longer timeline and schedule than in the existing draft permit.</p>
55	6.b.	Jurisdictional Stormwater Management Program Adaptive Process . . .	<p>New requirement. New cost. Request that the Board clearly describe, define that this section means, is, and the goal or purpose of it. Request the Board to clarify, why does a.i. which states "annually" differ from here, "at least annually"? Board should provide a template.</p>

VI.D	Minimum Control Measures	
56	D.1.a. . . . In lieu of requirements in Part VI.D.4 through VI.D.9 implement customized actions related to categories of control measures	Guidance material for customized actions should be referenced?

Attachment C

EXHIBIT A

56	D.1.b	Timelines for Implementation--Unless otherwise noted in Part VI.D each permittee shall ensure implementation of the requirements within 30 days after effective date of order	Permittees in violation after 30 days. This is unrealistic. Compliance phase-in timeline are needed.
56	2	Progressive Enforcement & Interagency Coordination	New requirement. New cost. City requests the Board to provide reasoning for the need for this section. Board needs to define this phrase and "Progressive." Board needs to clarify if the city needs to submit a document to the Board. Board needs to define what "reasonable" time period means.
58	D.4.a.i.(1.)	Regarding Public Information and Participation Program (PIPP) –“To measurably increase the knowledge of the target audiences about the permit”	How do we measure the increase in resident/audience knowledge? The permit should reference how improvements in target knowledge are measured.
58	3	Modify, Revise codes	This takes months to do; need to review the permit and figure out what has to be changed; write and review staff report; schedule for council review; 2nd reading.
59,60	D.4.b.c.d	County-wide PIPP	Los Angeles County Public Works role will change since they will no longer be the principal permittee as in the current MS4 permit. Collaboration between municipalities within Watershed Groups may not exist. The permit should identify the mechanism required for collaboration and designate a lead agency such as the County or Los Angeles RWQCB to coordinate the PIPP activities of the Watershed Groups.

Attachment C

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63,64	D.5.e.i.(2)	“Permittee does not need to inspect the facility if it is determined the RWQCB conducted an inspection of the facility within the prior 24 month period”.	According to the draft permit, it is possible that if the RWQCB inspects the facility at intervals outlined in the draft MS4 permit then the permittee may not need to inspect these Critical Commercial Sources. Are facilities subject to the Industrial General Permit requirements covered under this section? Currently, these facilities are inspected on a quarterly basis and have an annual comprehensive site visit inspection which is completed by the permittee and required as part of the permit conditions.
64	D.5.e.i.(4)	Exclusion Based on Watershed Management Program "A permittee is exempt from the mandatory inspection frequencies if implementing industrial inspection frequencies in accordance with an approved Watershed Management Program."	The Watershed Program starting on page 45, section VI.C. has many components. The Watershed Program portion of the Permit, VI.C.3.b. iv(1)(a)(iii) Minimum Control Measures/ Industrial Commercial Facilities Program could conceivably incorporate the same mandatory inspections as VI.D.5.e. of the MS4 permit. The Watershed Management Program requests permittees to “identify potential modifications” but doesn’t indicate any other guidance. The permit should provide guidance as to how inspection modifications could be completed.
65	D.5.f.	Effective source control BMPs for activities listed in Table 10....	Table 10 indicates pollutant-generating activities and BMP descriptions. The BMP descriptions are vague and inadequate for compliance purposes. Educational materials such as CASQA handbooks should be referenced.
66	D.6.	Planning and Land Development Program	Again, timeline for compliance (30 days) is unrealistic. Requires ordinance updates, new WQBELs resulting from TMDL requirements, development of guidance material, additional staffing.

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| 70 | c.ii. | . . . Technical infeasibility . . | New requirement. New cost. Burden on city to prove this. Costs of soil's test. Requirement promotes rainwater harvesting but no laws for this in state. The Board should act with other state and county agencies to implement rainwater harvesting guidelines. |
| 71 | iii. | Alternative compliance (in lieu of LID) | No in lieu fee in permit; request Board to clarify if the city will be in violation of permit since it has an in lieu fee option. City has offsite option, but not as onerous as draft permit; Board needs to clarify if the city be in violation by adhering to its offsite policy. |
| 74 | iv.1. | Offsite and onsite mitigation; Table 11 treatment | Request the Board to clarify why If one approved for offsite mitigation, the applicant has to also treat onsite stormwater. That is double treatment, double jeopardy. The point to do offsite treatment is to deal with equal mitigation volume at different location. Table 11, New requirement; new cost. Have to meet benchmark treatment standards. Need the Board to clarify who is responsible for testing. The property owner? City? Costly requirement to require monitoring. |
| 77 | v.1.d. | Hydromodification Control Plan | New requirement. New cost. Request the Board to explain why the city has to this. It manages flooding issues just fine without outside imposed requirements. This Plan has a plethora of required information items, elements that will require more staff time, costs. |

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79	vii.	Annual Report	New requirement. New cost. City required to provide a list of mitigation projects' descriptions, pollutants and flow reduction analyses comparing the expected results of alternative compliance projects to that achieved by retaining onsite the SWQDv. City requests the Board to explain why this requirement is necessary and what it achieves. Its meaning is unclear. Board needs to provide rationale for this, and what it accomplishes to meet goals, as well as provide a template of this document.
81	d.iii.	Maintenance agreement	New requirement. New cost. No COO until each applicant gives city O&M plan, monitoring plan, verification of ongoing maintenance, treatment BMPs and hydromodification BMPs. And each verification has a list of many requirements.
81	d.iv.	Tracking, inspection and enforcement of BMPs	New requirements. New costs. City has to implement tracking system, not defined, inspection and enforcement program. The city prefers to use existing codes for this, and not have to report to the Board. City requests the Board to explain why this section requirement is necessary. Need GIS/electronic system. Long list of required data points; have to verify proper O&M of BMPs. Enforcement requirements. Board must supply city with template. This requirement will be extra work, cost for city.
83	7.b.	Erosion & sediment control ordinance	New requirement. May require that we do new ordinance, or modify an existing one which requires months of time to implement.
83	7.d	Requirements for construction sites < 1 acre	We require this control in runoff ordinance but this formalizes it and entails significant inventory, tracking, see below.

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83	D.7.	Development Construction Program	Table 12 provides vague description of minimum BMPs. BMPs need to be more descriptive with guidance material referenced.
84-85	7.g.	Construction site inventory, tracking	New requirement. New costs. More staff time to create and implement. City's present electronic permitting system may be basis for this tracking and inventory, but permit required "continuous" updating, through life of project, and requires a lot of specific information for each site that the city does not track now. City needs to analyze the extra costs and staff time, as with all the other new requirements.
85	7.g.ii.	tracking will include a variety of strange data points	New requirement. New costs. Wording in this section grammatically faulty and makes no sense: Proximity to water, if significant threat to water quality, current construction phase (requires weekly updates, e.g. inspections); required inspection frequency (frequency not defined), start and end dates, when city approved the Erosion & Sediment Control Plan.
85-86	7.h.	Review process	New requirement. New Cost. More plan review time to review Erosion Control Plan, Storm Water Pollution Prevention Plan elements required, and list of what the Erosion control plan must address, plan must include rationale for BMPs. City needs to analyze new costs.
86	7.h.	Qualified SWPPP Developer (QSD)	New Requirement. New cost. City must require that Erosion plan be certified by this person? Is this a new staff person? Or applicant has to pay such a person; city has to require that all BMPs be designed by licensed CA engineer. City will require applicant to include a signed statement certifying compliance of all this stuff, which puts applicant on hook to the board for unknown requirements, costs. City has to develop checklist for conducting erosion control plan review.

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86-87	7.i.i/ii.	technical standards for construction BMP selection, install, O&M; risk ranking of BMPs	New requirement. New cost. City has to develop standards for these 3 parameters. Board needs to clarify for the city the following situation from the draft permit: If city develops standards, which it deems acceptable, won't the city be liable for any problems incurred by an applicant? Board should state why this is necessary and what it accomplishes that is not already performed now. Standards need to rate by risk; request Board establishes risk levels, and for Board to define risk. Ask Board to explain why this is required.
90	j.ii.2	Table 17, for 1 acre more projects only; all phases of construction inspect	New requirement. New cost. More inspections prior to project and during construction. New costs need to be analyzed.
91	j.ii.4.	inspection procedures	New requirement. New cost. Many more inspections required, data entry and tracking. Requires more staff resources.
93-94	8.c.	public facility inventory	New requirement. New cost. City has to maintain an Updated inventory of all facilities that are potential sources of pollution, in a GIS; have to create this list. Includes almost all city facilities; list of data points required for each site. Request the Board to explain why all these data points required and to what end.
94-95	8.d.	inventory of retrofitting opportunities, in public ROW	New requirement. New cost. City has to develop this list. Ask the Board to explain why this list is necessary and what purpose it serves. Compiling this list will be very timely, need additional staff, cost. Something city can do over time on its own through the MEP BMP, iterative process; does not have to forced, but have reasonable deadlines. City has to screen city for sites, evaluate and rank areas, work with private owners to retrofit private sites.

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97,98	D.8.	Public Agency Facility and Activity Management	Table 18 - General and Activity Specific BMPs need to be more descriptive and detailed. Guidance material should be referenced.
103	8.h.x.	Permittee owned treatment BMPs	New requirement. New cost. Very prescriptive requirements for city to inspect/maintain BMPs, ensure proper operation, and special handling of residual water from BMPs. Ask the Board to provide rationale of why it is necessary to impose on cities specific requirements. Let cities deal with O&M in its own way. The Board will not know if this is being done, no reporting requirement. Board needs to clarify reporting requirement.
108	D.9.c	Identification and Response to Illicit Connections	Only LACFCD is identified as needing to complete "systematic field inspections for MS4 illicit connections. Permittees may own portions of the storm drains that are connected to LACFCD storm drains within their jurisdiction. Are permittees required to complete inspection surveys of their open channels and underground storm drains according to defined schedules outlined in the permit? In the City of Santa Monica LACFCD owns approx. 47 miles of storm drain and the City of Santa Monica owns approx. 9 miles.

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VI.E		TMDL Provisions	
112	VI.E.2.b.ii	Comingled discharges - each permittee is only responsible for discharges from the MS4 for which they are owners and/or operators.	In some cases it will be impossible/cost prohibitive to distinguish comingled flows from various permittees?
113	VI.E.2.d.i	... compliance ... if any of the following is demonstrated ... (1) WQBEL, (2) RWL with TMDL, (3) no discharge, (4) WMP fully implemented	Interim allows compliance via implementation of BMP's
114	VI.E.2.e.i	... compliance ... if any of the following is demonstrated ... (1) WQBEL, (2) RWL with TMDL, (3) no discharge	Final does not allow compliance via implementation of BMP's