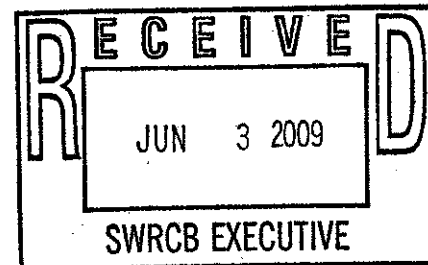




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

re: SWRCB/OCC File A-1780



Dear Ms. Townsend:

The following comments are provided by United States Environmental Protection Agency, Region 9 (EPA) regarding the above-referenced matter, challenging the modified Los Angeles County Municipal Separate Storm Sewer System (MS4) permit issued by the Los Angeles Regional Water Quality Control Board on September 14, 2006. This permit modification incorporates Total Maximum Daily Load (TMDL) dry weather wasteload allocations. EPA supported the September 14, 2006 permit modification.

EPA is in agreement with the draft Proposed Order dated May 4, 2009, which proposes that the State Water Resources Control Board deny the petition challenging this permit modification.

EPA agrees the modified permit's provisions are sufficiently clear. We also agree that the modified permit's provisions specifically regulate dry weather discharges from the Los Angeles County MS4. As is described in the draft proposed Order, these dry weather discharges are not stormwater flows. However, these flows are discharges from the MS4 and are appropriately regulated under the MS4 requirements of section 402(p)(3)(B) of the Clean Water Act. Were these dry weather discharges not regulated via the MS4 permit, they would be unauthorized discharges and thus prohibited under the Clean Water Act.

EPA agrees the modified permit is consistent with the wasteload allocations (WLAs) established in the bacteria TMDL for Santa Monica Bay beaches. As pointed out in the draft Proposed Order, it is appropriate here to incorporate these WLAs as numeric permit limits, particularly as these dry weather discharges are subject to the prohibition in section 402(p)(3)(B)(ii) of the Clean Water Act as non-stormwater.


We therefore support the draft Proposed Order's denial of the petition.

In addition, although not directly related to the dry weather discharges at issue here, we would like to point out that the permitting authority also has the discretion to express permit conditions for municipal stormwater discharges as numeric limits where appropriate. The draft Proposed Order makes reference to a November 22, 2002 EPA Guidance document entitled, "Establishing Total Maximum Daily Loads (TMDLs) Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs." This guidance discusses the circumstances where permit writers can include non numeric effluent limits pursuant to 40 CFR 122.4(k). Apparently the petitioners cited a provision in this guidance to support their argument that municipal stormwater permits should not include numeric effluent limits. However, this guidance also states that when a non-numeric limit (i.e. Best Management Practice, or BMP-based, limit) is imposed in a permit, "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." In our review of MS4 permits, we have found that permitting agencies typically do not have the necessary supporting documentation in the permit's administrative record to demonstrate that BMPs are expected to be sufficient to implement WLAs. It would be consistent with EPA's regulations and the recommendations in this guidance for a permitting agency to decide it is appropriate to use numeric effluent limits.

When considering the national stormwater program, it's important to recognize that EPA's November 22, 2002 guidance reasonably reflected program knowledge after approximately a decade of implementing the Clean Water Act's stormwater provisions. The guidance envisioned that adjustments such as more stringent controls might be necessary in the future to protect water quality. It is now over six and a half years later. In States like California where the fourth generation Phase I municipal stormwater permits are being issued, we see that municipal stormwater discharges continue to be a significant cause of water quality impairments. Thus we support the State of California in its efforts to include clear and enforceable MS4 permit conditions to ensure water quality is protected.

To reiterate, we support the May 4, 2009 draft Proposed Order upholding the incorporation of dry weather WLAs into the Los Angeles Regional Water Board's MS4 permit for LA County.

Sincerely,

 3 June 2009
Alexis Strauss, Director
Water Division