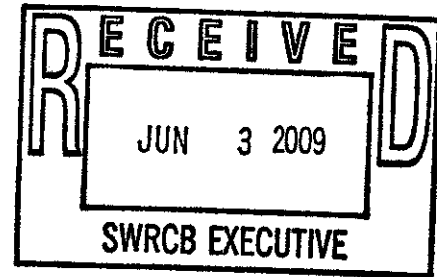


**SANTA MONICA
BAYKEEPER**

6/16/09 Bd Mtg Item 13
A-1780
Deadline: 6/3/09 by 12 noon

June 3, 2009

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: Comments on Draft Order - *In the Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District WDR Order No. R4-2006-0074*; SWRCB/OCC File A-1780 – June 16, 2009 Board Meeting

Dear Chair Hoppin and Members of the Board,

Santa Monica Baykeeper, the Natural Resources Defense Council and Heal the Bay (“Environmental Groups”)¹ support the State Water Resources Control Board’s (“State Board”) decision to deny the Los Angeles County (“County”) and Los Angeles Flood Control District’s (“District”) petition challenging the Los Angeles Regional Water Quality Control Board (“Regional Board”) Order No. R4-2006-0074. However, in the interest of fairness, the record in this matter must include Environmental Groups’ Response to Los Angeles County’s Petition for Review (“Response to Petition”) and our separate Response to Los Angeles County’s Renewal of Petition for Review and Supplemental Statement of Points and Authorities (“Response to Supplemental Statement”), both submitted to the State Board on November 20, 2008. In addition, as explained below and for the reasons provided in our Request to Consider Supplemental Evidence and Request for Administrative Notice from February 6, 2009 (collectively “Supplemental Evidence Requests”), the documents attached to these requests must also be added to the record.

I. The Draft Order Is Correct in Rejecting the County and District’s Challenge of Order No. R4-2006-0074

The State Board’s decision to deny the petition is justified because the Regional Board’s adoption of Order No. R4-2006-0074 was appropriate and proper. (23 C.C.R. § 2052(a)(2)(A)).

¹ Although the Draft Order states that only Santa Monica Baykeeper sought leave to supplement the record and make additional submissions, it was in fact all Environmental Groups, parties to the Regional Board hearing on the adoption of Order No. R4-2006-0074, who made these requests. Accordingly, the State Board Order in this matter should be revised to reflect that.

The Regional Board incorporated the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load ("Bacteria TMDL") into the Los Angeles County Municipal Separate Storm Sewer System Permit (NPDES No. CAS001004, Regional Board Order No. 01-182) ("Permit") to prohibit non-stormwater discharges from the municipal separate storm sewer system ("MS4") as required by the Clean Water Act and its implementing regulations. (33 U.S.C. § 1342 (p)(3)(B)(ii) (requiring NPDES permit to "effectively prohibit non-stormwater discharges into the storm sewers"); 40 C.F.R. 122.44(d)(1)(vii)(B) (NPDES permits must be "consistent with the assumptions and requirements of any available waste load allocation for the discharge prepared by the State and approved by the EPA")). Moreover, this Permit amendment was necessary to eliminate a significant public health problem caused by the unabated persistent non-stormwater MS4 discharges of harmful bacteria endangering the health of millions of swimmers and beachgoers visiting Santa Monica Bay beaches each summer season. (See Fact Sheet Supporting the Amendments to the Los Angeles County Municipal Separate Storm Sewer System Permit (Order No. 01-182; NPDES Permit No. CAS004001) to Incorporate Summer Dry Weather Waste Load Allocations for Bacteria Pursuant to the Santa Monica Bay Beaches Bacteria TMDL (pp. 10-77 to 10-93 of the Administrative Record), at 8-9, 11, 14-15).

Thus the Regional Board acted as specifically required by both the Clean Water Act and the California Water Code when it adopted Order No. R4-2006-0074. (Wat. Code § 13370 (c) (authorizing the state to implement the provisions of the Clean Water Act and implementing federal regulations); *Id.* § 13377 (state and regional water board must issue waste discharge requirements "which apply and ensure compliance with all applicable provisions" of the Clean Water Act) (emphasis added)). Consequently and as explained in further detail in Environmental Groups' Response to Petition and Response to Supplemental Statement attached to this letter, the Regional Board's actions at issue in this matter were appropriate and proper and the County and District's Petition should be denied in its entirety.

II. The Administrative Record Must Include Environmental Groups' Response to Petition and Response to Supplemental Statement

Environmental Groups' Response to Petition and Response to Supplemental Statement should be explicitly added to the record because Environmental Groups are formal parties to this proceeding and our responses were submitted with State Board leave and in reliance of an extension granted by the State Board.

Environmental Groups were formally designated as parties to the Regional Board proceedings on the adoption of Order No. R4-2006-0074 incorporating the Bacteria TMDL into the Permit. (See Transcript of Regional Board September 14, 2006 Hearing, at 13:12-14 (pp. 9-296 to 6-682 of the Administrative Record)). Environmental Groups took a very active role in the Regional Board hearing, making oral arguments, presenting exhibits, examining and cross-examining witnesses, etc. (Administrative Record at pp. 9-1 to 9-682).

Furthermore, Environmental Groups have maintained their party status in the administrative review of Regional Board Order No. R4-2006-0074. (See E-mail from David Beckman to Elizabeth Jennings, State Board Office of Chief Counsel, dated September 26, 2008 (attached)). In fact, our Response to Petition and Response to Supplemental Statement were both

submitted in reliance to the State Board granting Environmental Groups' an extension to respond to the County and District's submissions. (See Request for Extension of Time Granted, dated November 5, 2008).

Puzzlingly, the Draft Order specifically adds to the record the County and District's Petition and Supplemental Statement of Points and Authorities and the request to remove the stay on the petition but makes no mention of the Environmental Groups' responses. Draft Order at 6. This omission should be corrected and Environmental Groups' Response to Petition and Response to Supplemental Statement should be added to the administrative record for this matter.

III. The Documents Included in Environmental Groups' Supplemental Evidence Requests Should Be Added to the Administrative Record in This Matter

To ensure accuracy and completeness of the administrative record, the State Board must add to the record all documents included in Environmental Groups' Supplemental Evidence Requests from February 6, 2009 as these documents directly relate to the County and District's Petition, Petition renewal and Supplemental Statement on Points and Authorities in Support of Petition and could not have been included in the record prior to the September 14, 2006 Regional Board hearing. (23 C.C.R. § 2050.6 (allowing the State Board to consider "evidence not previously provided to the regional board" when certain requirements are met); *Id.* § 2064 (providing that "the record may be supplemented by any other evidence and testimony accepted by the state board pursuant to section 2050.6)).

The County and District's renewal of their Petition seeking to invalidate the incorporation of the Bacteria TMDL waste load allocations into the Permit nearly two years after the Permit amendment took effect is an attempt to deprive the public of the protections of the Bacteria TMDL. Most troubling is that the County and District reinstated their petition and raised new issues in the Supplemental Statement of Points and Authorities *after* receiving from the Regional Board notices of violation of the Bacteria TMDL and the Permit. (See Environmental Groups' Supplemental Evidence Requests, Exhibits A-D). This is an ill-disguised attempt by the County and District to shield themselves from responsibility for Permit violations which clearly amounts to "unclean hands" and is barred by laches. (See Environmental Groups' Response to Supplemental Statement at 5-7). The documents included in Environmental Groups' Supplemental Evidence Requests are necessary to address all issues raised by the County and District's petition, petition renewal and supplemental statement and consequently must be made part of the record in this matter.²

² Environmental Groups' Supplemental Evidence Requests as well as all document II documents which Environmental Groups are requesting to be added to the record are attached to this letter.

In conclusion, Environmental Groups support the State Board's proposed order denying the County and District's petition and request the addition to the record of the documents included in our Supplemental Evidence Requests.

Thank you for the opportunity to provide comments on the draft order in this matter. Please contact Tatiana Gaur at 310-305-9645 if you have any questions.

Sincerely,

Tatiana K. Gaur

Tatiana Gaur, Esq.
Attorney for Santa Monica Baykeeper,
Natural Resources Defense Council and
Heal the Bay

Enclosed:

E-mail correspondence between Environmental Groups', County and District, Regional Board and State Board (September 26, 2008)

Granted request for extension of time to respond to County and District's Petition and Supplemental Statement, signed by Alex P. Mayer, State Board Office of Chief Counsel (November 5, 2008)

Environmental Groups' Response to Petition for Review (November 20, 2008)

Environmental Groups' Response to Renewal of Petition for Review and Supplemental Statement of Points and Authorities (November 20, 2008)

Environmental Groups' Request to Consider Supplemental Evidence and Request for Administrative Notice along with Exhibits A through I (February 6, 2009)



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

November 5, 2008

Michael J. Levy, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Levy:

PETITION OF COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2006-0074, AMENDING ORDER NO. 01-182 [NPDES CAS004001], FOR MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES IN LOS ANGELES COUNTY, EXCEPT FOR LONG BEACH), LOS ANGELES WATER BOARD: REQUEST FOR EXTENSION OF TIME GRANTED SWRCB/OCC FILE A-1780

The State Water Resources Control Board (State Water Board) has received a renewed request for a time extension to submit a response to the above-referenced petition and to submit a copy of the administrative record. The request, submitted by Mr. Levy on behalf of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board), was received by this office on November 4, 2008. The request was accompanied by a stipulation wherein Petitioners, the Los Angeles Water Board, and three environmental groups agreed that a two-week extension to the current deadline should be sought.

This letter grants the above request. Accordingly, the Los Angeles Water Board must submit the administrative record no later than **November 20, 2008**. In addition, the Los Angeles Water Board and all interested persons must respond to the original petition, as submitted on October 23, 2006, and Petitioners' Supplemental Statement of Points and Authorities by **November 20, 2008**. All other instructions from my letters dated October 7, 2008, and October 28, 2008, remain in full force.

If you have any questions regarding this letter, please contact me at (916) 341-5051.

Sincerely,

Alex P. Mayer
Staff Counsel

cc: See next page

California Environmental Protection Agency

cc: Judith A. Fries, Esq. [via U.S. mail & email]
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Mr. Mark Pestrella, P.E. [via U.S. mail & email]
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County of Los Angeles and Los Angeles
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David Beckman, Esq.
Natural Resources Defense Council
1314 Second Street
Santa Monica, CA 90401

(Continued next page)

Ms. Tracy Egoscue [via email only]
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State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

cc: (Continued)

Jennifer L. Fordyce, Esq. [via email only]
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Mr. Doug Eberhardt, Chief [via email only]
Permits Office
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
eberhardt.doug@epa.gov

Lyris List [via email only]

Tatiana Gaur

From: David Burhenn [dburnhenn@burhenngest.com]
Sent: Friday, September 26, 2008 11:06 AM
To: Beckman, David; Sheri Denson; Betsy Jennings
Cc: hgest@burhenngest.com; eberhardt.doug@epa.gov; mpestrel@ladpw.org; daniel@lawyersforcleanwater.com; martin@lawyersforcleanwater.com; Mehta, Michelle; Kyle, Selena; Carlos Urrunaga; David Bacharowski; Deborah Smith; Jeff Ogata; Michael Levy; Tracy Egoscue; Jaiswal, Anjali; Mark Gold; Tatiana Gaur; Fries, Judith; Howard Gest; David Burhenn
Subject: RE: Objection and Motion to Strike Petitioners' Supplemental Statement of Points and Authorities, et al

David,

1. No one is hiding anything from you. We fully expected that you would receive notice that the petition was taken out of abeyance, along with a copy of the supplemental memorandum of points and authorities.
2. The regulations provide that the petition is filed with the State Board. Once the State Board determines the petition is complete, the State Board notifies the Regional Board, requests the administrative record, and notifies other interested parties, advising them that they can file a response. 23 CCR § 2050.5. We simply followed the regulations, fully expecting section 2050 to be followed here, and that you would receive notice that the petition had been taken out of abeyance pursuant to that procedure.

By the way, I did not receive your e-mail directly because there is a typographical error in the address.

Howard Gest
Burhenn & Gest LLP
624 South Grand Avenue, Suite 2200
Los Angeles, CA 90017
(213) 629-8787
(213) 688-7716 (fax)

CONFIDENTIALITY NOTICE: This e-mail is sent by a law firm and may contain information that is privileged or confidential. It is intended solely for the personal use of the designated recipient(s). If you are not a designated recipient, any review, distribution or copying of this e-mail is strictly prohibited. If you are not a designated recipient, please delete this e-mail and any attachments and notify us immediately.

-----Original Message-----

From: Beckman, David [mailto:dbeckman@nrdc.org]
Sent: Friday, September 26, 2008 9:54 AM
To: Sheri Denson; Betsy Jennings
Cc: David Burhenn; hgest@burhenngest.com; eberhardt.doug@epa.gov; mpestrel@ladpw.org; daniel@lawyersforcleanwater.com; martin@lawyersforcleanwater.com; Mehta, Michelle; Kyle, Selena; Carlos Urrunaga; David Bacharowski; Deborah Smith; Jeff Ogata; Michael Levy; Tracy Egoscue; Jaiswal, Anjali; Mark Gold; Tatiana Gaur
Subject: RE: Objection and Motion to Strike Petitioners' Supplemental Statement of Points and Authorities, et al

Counsel: why didn't the formal parties to the underlying proceedings receive notice and copies of the request to remove this matter from the abeyance procedure (or the supplemental brief)?

Howard?

David S. Beckman

Senior Attorney & Co-Director, Water Program Natural Resources Defense Council
PRIVILEGE AND CONFIDENTIALITY NOTICE This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law as attorney client and work-product confidential or otherwise confidential communications. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately notify us at (310) 434-2300.

-----Original Message-----

From: Sheri Denson [mailto:SDenson@waterboards.ca.gov]

Sent: Thursday, September 25, 2008 4:27 PM

To: Betsy Jennings

Cc: dburhenn@burhenngest.com; hgest@burhenngest.com; eberhardt.doug@epa.gov; mpestrel@ladpw.org; daniel@lawyersforcleanwater.com; martin@lawyersforcleanwater.com; Beckman, David; Mehta, Michelle; Kyle, Selena; Carlos Urrunaga; David Bacharowski; Deborah Smith; Jeff Ogata; Michael Levy; Tracy Egoscue

Subject: Objection and Motion to Strike Petitioners' Supplemental Statement of Points and Authorities, et al

Attached is a pdf copy of the correspondence mailed today concerning the above-referenced matter.

Thank you.

Sheri Denson, Senior Legal Typist
Water Resources Control Board
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Ph: (916) 341-5192
E-Mail: sdenson@waterboards.ca.gov

1 TATIANA K. GAUR, Bar No. 246227
2 SANTA MONICA BAYKEEPER
3 P.O. Box 10096
4 Marina del Rey, CA 90295
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6 Attorney for Environmental Groups
7 SANTA MONICA BAYKEEPER,
8 NATURAL RESOURCES DEFENSE COUNCIL and
9 HEAL THE BAY

10 STATE OF CALIFORNIA
11 STATE WATER RESOURCES CONTROL BOARD

12 In the Matter of the Petition of THE COUNTY) SANTA MONICA BAYKEEPER, NATURAL
13 OF LOS ANGELES AND THE LOS) RESOURCES DEFENSE COUNCIL AND
14 ANGELES COUNTY FLOOD CONTROL) HEAL THE BAY'S RESPONSE TO
15 DISTRICT FOR REVIEW OF CALIFORNIA) PETITION FOR REVIEW
16 REGIONAL WATER QUALITY CONTROL)
17 BOARD, LOS ANGELES REGION, ORDER)
18 NO. R4-2006-74))

19 **I. INTRODUCTION**

20 The Santa Monica Baykeeper, Natural Resources Defense Council, and Heal the Bay
21 (collectively "Environmental Groups") oppose the Los Angeles County and the Los Angeles
22 County Flood Control District's (collectively "County") petition for review ("Petition").¹ The
23 incorporation of the Santa Monica Bay Beaches Dry Weather Bacteria Total Maximum Daily
24 Load ("SMB TMDL") into the County's municipal stormwater permit was not only appropriate
25 and proper—it was required by state and federal laws.

26
27
28 ¹ The Petition was filed in October 2006 and immediately stayed per the County's request. Almost two years later, in September 2008, the County requested the stay on the Petition be lifted and simultaneously filed a Supplemental Statement of Points and Authorities in support of the Petition.

1 Like the County's earlier efforts to shield itself from its responsibility to meet water
2 quality standards and comply with its municipal stormwater permit,² the County's Petition is
3 based on legal and factual misstatements and misinterpretations. The County's Petition
4 essentially amounts to a request that the State Water Resources Control Board ("State Board")
5 improperly amend the Los Angeles Region Water Quality Control Plan ("Basin Plan") through
6 the Permit modification and reopener procedure. For the reasons discussed in this Response, the
7 Petition should be DENIED.

8 **II. LEGAL STANDARD**

9 When a person files a petition to review an action of a regional board, the State Board
10 may, "[a]t any time, refuse to review the action or failure to act of the regional board if the
11 petition fails to raise substantial issues that are appropriate for review." 23 C.C.R. § 2052(a)(1).
12 The State Board may also deny the petition if, after reviewing all or part of the regional board's
13 records pertaining to the matter, the State Board finds that the "action . . . of the regional board
14 was appropriate and proper or that the petition fails to raise substantial issues that are appropriate
15 for review." 23 C.C.R. § 2052(a)(2)(A).

16 **III. BACKGROUND**

17 **A. Permit Amendment**

18 The County is one of 84 local entities covered by the Los Angeles Regional Water
19 Quality Control Board ("Regional Board") Order 01-182, NPDES Permit No. CAS004001,
20 Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Within the County
21 of Los Angeles and the Incorporated Cities Therein, Except the City of Long Beach ("Permit"),
22 issued on December 13, 2001, and amended on September 14, 2006 and August 9, 2007. The
23 Permit regulates waste discharges from County's municipal separate storm sewer system
24 ("MS4").

25 On September 14, 2006, the Regional Board held an adjudicative hearing on a proposed
26 Permit amendment to include the waste load allocations ("WLAs") of the SMB TMDL as

27
28 ² In 2002, the County and 33 cities began a comprehensive legal challenge of the Permit. This litigation ended with
the Permit being upheld by the California Court of Appeal. See *County of Los Angeles v. California State Water
Resources Control Board* (2006) 143 Cal.App.4th 985, 989.

1 incorporated into the Basin Plan. The Environmental Groups were formal parties at the hearing
2 as provided by section 648 of Title 13 of the California Code of Regulations. Regional Board
3 Meeting Transcript (September 14, 2006) (“Transcript”), at 13:12-14. At the close of the
4 hearing, the Regional Board voted to approve the Permit amendment, adding subpart B to Part 1
5 (Discharge Prohibitions) and subpart 5 to Part 2 (Receiving Water Limitations) of the Permit.
6 Thus, the Discharge Prohibitions section of the Permit now includes a prohibition on
7 “[d]ischarges of Summer Dry Weather flows from MS4s into Santa Monica Bay . . . that cause or
8 contribute to exceedances of the bacteria Receiving Water Limitations in Part 2.5 . . .” Permit, at
9 22.³ Part 2.5 makes illegal the discharge of bacteria from MS4s into the Santa Monica Bay that
10 “cause or contribute to exceedances . . . of the applicable bacteria objectives” in the wave wash
11 during summer dry weather. *Id.* at 24. The applicable bacteria objectives are defined as “the
12 single sample and geometric mean bacteria objectives set to protect the Water Contact
13 Recreation (REC-1) beneficial use, as set forth in the Basin Plan.” *Id.* The Regional Board also
14 added specific findings related to the Permit amendment incorporating the SMB TMDL. *Id.* at
15 15-17.⁴

16 **B. Regional Board Adjudicative Hearing**

17 The Regional Board hearing to amend the permit was an adjudicative proceeding as
18 provided by Title 23 of the California Code of Regulations. Transcript, at 13:6-8. David Nahai,
19 the Regional Board Chair at the time, presided over the hearing. *Id.* at 12:15-16. Prior to the
20 hearing the Executive Officer of the Regional Board sent a letter describing the procedures to be
21 used at the hearing. Letter from Jonathan Bishop, Regional Board Executive Officer to
22 Interested Parties, dated September 8, 2006. The letter also specified the order of proceedings
23 with estimated times for Regional Board staff presentation, County presentation, Environmental
24

25 ³ The citations to the Permit in this Response refer to the current operative Permit on the Regional Board’s website,
26 http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/ms4_permits/los_angeles/2001-2007/LA_MS4_Permit2001-2007.pdf.

27 ⁴ The Regional Board amended the Permit again in 2007 to incorporate the Marina del Rey Harbor Mothers’ Beach
28 and Back Basins Bacteria TMDL (“MDR TMDL”). *See* Permit, at 15. The MDR TMDL is part of the Basin Plan
and has the same WLAs, implementation and bacteria objectives as the SMB TMDL. *See* Regional Board
Resolution No. 2003-012, Attachment A. The County has not challenged the MDR TMDL Permit amendment.

1 Groups presentation, cross-examination and closing statements “subject to limitation and
2 extension by the Chair upon a showing of good cause.” *Id.* Thus, the Regional Board staff was
3 allotted 40 minutes, the County was allotted 60 minutes and the Environmental Groups were
4 allotted 60 minutes for their respective presentations. *Id.* Cross-examination was to be 30
5 minutes and closing statements were allotted 20 minutes. *Id.* A list of documents on which the
6 Regional Board intended to rely on for the Permit amendment was to be posted online “without
7 prejudice to the addition of further materials as may be necessary to respond to comments and
8 testimony, or inquires at the hearing.” *Id.*

9 At the hearing, the Regional Board Chair granted the County, Regional Board staff and
10 Environmental Groups five minutes each for an opening statement. Transcript, at 15:2-5. The
11 Regional Board Chair granted the County an additional five minutes to complete its opening
12 statement. *Id.* at 61:5 - 62:9. The Regional Board also granted the County thirty more minutes
13 to present its case thus bringing the time allotted to the County for presentation to one-and-a-half
14 hours. *Id.* at 94:8-11; 157:10.⁵ Neither the Regional Board staff nor the Environmental Groups
15 requested or were granted any additional time. The other items of the order of proceedings,
16 including the time allotted for each party’s cross-examination and closing statements, were
17 identical to those provided in the September 8, 2006 letter from the Regional Board Executive
18 Officer. *Id.* at 13:4 – 16:10. At the start of the hearing and before the opening statements, the
19 County made numerous procedural and evidentiary motions which were considered in detail and
20 decided by the Regional Board. *Id.* at 17:22-53:6.

21 IV. DISCUSSION

22 The County’s arguments lack merit. The Permit amendment was appropriate to comply
23 with the Clean Water Act’s prohibition on non-stormwater discharges—discharges, in this case,
24 that science shows are sickening people at area beaches. In seeking to draw a contrast between
25 the requirements in the SMB TMDL and the so-called “iterative process,” the County ignores
26 that the SMB TMDL addresses dry weather non-stormwater discharges, not wet weather
27

28 ⁵ Regional Board Chairman David Nahai specifically urged the counsel for County, Mr. Howard Gest, to use the
time allotted to the County judiciously and avoid unnecessary and repetitive questions. Transcript, at 119:1-120:3.

1 stormwater discharges. It further ignores past litigation that shows that the County understands,
2 and has previously asserted, that there is no “iterative process” under the Permit that excuses
3 non-compliance with water quality standards, a conclusion reached by numerous courts that have
4 similarly interpreted the Permit. At bottom, the County’s Petition is an improper attempt to
5 amend the Basin Plan through the Permit reopener procedure. It is unsupported by the cited
6 State Board precedent, the EPA guidance or the State Board stormwater panel recommendations.
7 Contrary to the County’s assertions, the Permit amendment is consistent with existing TMDLs.
8 Moreover, the Regional Board was not required to make the findings proposed by the County
9 and did comply with the requirements of CEQA. The County’s challenge of the Permit
10 amendment on procedural due process grounds is also baseless.

11 **A. The Permit Must Comply with Clean Water Act Requirements to Effectively**
12 **Prohibit Non-Stormwater Discharges.**

13 The SMB TMDL was developed to regulate summer dry weather discharges into the Los
14 Angeles County MS4. *See* Fact Sheet Supporting the Amendments to the Los Angeles County
15 Separate Storm Sewer System Permit to Incorporate Summer Dry Weather Waste Load
16 Allocations for Bacteria Pursuant to the Santa Monica Bay Beaches Bacteria TMDL (“SMB
17 TMDL Factsheet”), at 8.⁶ Summer dry weather discharges are non-stormwater discharges. The
18 SMB TMDL WLAs of zero allowable exceedance days during summer dry weather are the
19 means to achieve compliance with the unambiguous mandate of section 402(p) of the CWA that
20 NPDES permits “effectively prohibit non-stormwater discharges into the storm sewers.” When
21 it added Part 2.5 to the Permit requiring “no discharges of bacteria from MS4s into the Santa
22 Monica Bay that cause or contribute to exceedances . . . of applicable bacteria objectives” during
23 summer dry weather, the Regional Board acted in the only lawful way it could under the
24 circumstances. Had the Board sought to adopt a dry weather, non-stormwater TMDL that did
25 anything less than require the cessation of non-stormwater discharges as it did, its action would
26 have been inconsistent with 33 U.S.C. § 1342(p)(3)(B)(ii).

27 _____
28 ⁶ The Factsheet is part of the record as the Regional Board included it in the list of documents on which the Board
relied in drafting the SMB TMDL amendment.

1 In addition to being legally mandated, the Permit amendment was especially justified by
2 the Permittees' well-documented history of non-compliance with the Permit's requirement that
3 MS4 Permittees must "effectively prohibit non-storm water discharges into the MS4 and
4 watercourses" with some limited exceptions. Permit, at 21. As stated in the SMB TMDL
5 Factsheet, "very few Permittees have made changes to their Storm Water Quality Management
6 Programs in response to exceedances of bacteria standards at SMB beaches." SMB TMDL
7 Factsheet, at 11. It is uncontested on the record before the State Board that "[u]nder the iterative
8 approach over three permit cycles, required elements of the Permit (e.g., elimination of illicit
9 connections/illicit discharges (IC/ID) into their MS4s, revisions to their SQMP, etc.) have not
10 resulted in the elimination of exceedances of water quality standards" at Santa Monica Bay
11 beaches.⁷ As a result, the Regional Board found—and no party can reasonably dispute—that
12 "the harm to the public from violating the WLAs is dramatic both in terms of health impacts to
13 exposed beachgoers, and the economic cost to the region associated with related illnesses."
14 Permit, at 15. The summer dry weather WLAs were adopted to protect public health and be
15 consistent with state bacteriological standards established in the California Health and Safety
16 Code. SMB TMDL Amendment, Attachment A, Table 7-4.1, n. 2. Therefore, amending the
17 Permit to add the SMB TMDL WLAs was legally required and reasonable.

18 In this connection, the County's request (Exhibit A, Proposed Changes to Permit
19 Amendment) that compliance with the SMB TMDL should be achieved through the methods
20 described in Part 2.3 of the Permit ignores past litigation between the parties and others
21 authoritatively construing the Permit's Part 2 Receiving Water Limitations provisions. Under
22 the Permit, "[d]ischarges . . . that cause or contribute to the violation of Water Quality Standards
23 or water quality objectives are prohibited." Permit, at 23. In legal briefs challenging this
24

25 ⁷ Finding E.32 reads in pertinent part: "The iterative approach to regulate municipal storm water is not an
26 appropriate means of implementing the Santa Monica Bay beaches . . . Summer Dry Weather WLAs for any and all
27 of the following reasons: (a) The WLAs do not regulate the discharge of storm water; (b) The harm to the public
28 from violating the WLAs is dramatic both in terms of health impacts to exposed beachgoers, and the economic cost
to the region associated with related illnesses; (c) Under the iterative approach over three permit cycles, required
elements of the MS4 permit (e.g. elimination of illicit connections/illicit discharges (IC/ID) into their MS4s,
revisions to their SQMP, etc.) have not resulted in the elimination of exceedances of water quality standards at the
beaches . . ." Permit, at 15-16.

1 provision, the County and other permittees have consistently characterized its language as
2 requiring compliance with water quality standards without an “iterative” safe harbor. Courts
3 have consistently interpreted the Permit’s Receiving Water Limitations provisions as a whole as
4 requiring compliance with water quality standards, and these courts have rejected the view that a
5 “iterative approach” diminishes the fundamental duty to meet standards. *See County of Los*
6 *Angeles v. State Water Resources Control Board* (2006) 143 Cal.App.4th 985 (Parts G through L
7 ordered nonpub., at 27-31 (Oct. 10, 2006, Case No. B184034); *see also Building Industry*
8 *Association of San Diego County v. State Water Resources Control Board* (2004) 124
9 Cal.App.4th 866, 883, 887. Therefore, while the Regional Board correctly found that the
10 “iterative approach to regulating municipal storm water is not an appropriate means of
11 implementing” the SMB TMDL because the “WLAs do not regulate the discharge of storm
12 water,” Permit, at 15, the County’s request to make TMDL compliance subject to Part 2.3 would
13 not relieve it of the duty to comply with beach water quality standards. Any assertion to the
14 contrary now is contradicted by conclusive interpretations of the Permit in proceedings to which
15 the County, environmental groups, and state agencies were parties—and is, under principles of
16 *res judicata*, therefore entirely improper in any event.

17 **B. NPDES Permits Must Implement Basin Plan Standards and TMDLs and the**
18 **County Cannot Seek to Challenge and Amend the Basin Plan Through a**
19 **Permit Reopener.**

20 The NPDES reopener is not a procedure to amend the Los Angeles Basin Plan. Indeed,
21 at the permit reopener hearing, the County and all parties were advised that the validity of the
22 TMDL as a Basin Plan amendment was not at issue. Transcript, at 14:11-21. An NPDES permit
23 reopener is used to modify an already-issued permit in certain circumstances such as the
24 amendment of water quality standards or regulations on which the permit was based. 40 C.F.R.
25 § 122.62(3). The procedure to amend the Basin Plan is different and includes the State Board’s
26 approval of any revision proposed by the Regional Board. Wat. Code § 13245.

27 Moreover, state and federal law require that a permit issued to regulate discharges into
28 receiving waters must incorporate existing water quality standards, TMDLs and TMDL
implementation plans. Pursuant to section 13263 of the California Water Code, the Regional

1 Board is required to establish waste discharge requirements (“WDRs”) which “implement any
2 relevant water quality control plans that have been adopted.” Similarly, “once a TMDL is
3 developed, effluent limitations in NPDES permits must be consistent with the WLA’s in the
4 TMDL.” *Communities for a Better Environment v. State Water Resources Control Bd.* (2005)
5 132 Cal.App.4th 1313, 1322, citing 40 C.F.R. § 122.44(d)(1)(vii)(B) (NPDES permits must be
6 “consistent with the assumptions and requirements of any available waste load allocation for the
7 discharge prepared by the State and approved by the EPA”).

8 Nevertheless, the County’s substantive contentions both at the permit reopener hearing
9 and in its Petition attack the substance of the SMB TMDL as a Basin Plan amendment, including
10 its implementation schedule, compliance points, and sources of pollution. This improper attempt
11 to amend the Basin Plan through the NPDES permit reopener procedure should not be allowed.

12 **1. The Permit Cannot Include a Compliance Schedule Now that the**
13 **SMB TMDL’s Three-Year Schedule Has Expired.**

14 The County’s argument that its interpretation of the Permit’s “iterative approach”
15 provision should be applied to the SMB TMDL WLAs as incorporated into the Permit is
16 essentially a request to include a schedule of compliance in the Permit for achieving compliance
17 with the SMB WLA. While this interpretation of Part 2.3 of the Permit as permitting water
18 quality standard non-compliance (or “iterative” compliance) is, as discussed above, inconsistent
19 with case law interpreting the Permit, the requested relief would be otherwise improper. Since
20 the three-year compliance schedule included in the SMB TMDL expired over before the
21 TMDL’s incorporation into the Permit more than two years ago, the Regional Board never had
22 authority to include any compliance schedules to implement that TMDL in any new permits or
23 amendments.

24 The Regional Board may only include a compliance schedule in a NPDES permit if it is
25 authorized in the Basin Plan. 33 U.S.C. § 1313(e)(3); *Star-Kist Caribe, Inc.*, 2 E.A.D. 758, 1989
26 EPA App. LEXIS 38 (March 8, 1989). Where, as with the SMB TMDL, an authorized
27 compliance schedule has expired, such authority is no longer present. The SMB TMDL was
28 adopted into the Basin Plan on July 15, 2003. The SMB TMDL required compliance with the

1 summer dry weather WLAs of zero exceedance days of the applicable bacteria numeric limits
2 within three years of the effective date, or by July 15, 2006. SMB TMDL Basin Plan
3 Amendment, Attachment A, Table 7-4.1. The three-year compliance deadline thus expired
4 before the SMB TMDL's WLAs were incorporated into the Permit. Because at the time of the
5 Permit amendment the SMB TMDL for summer dry weather had no compliance schedule, the
6 Regional Board was not authorized to include a compliance schedule or otherwise extend the
7 timing of the County's compliance.

8 The only remaining situation in which the Regional Board could have extended the time
9 for compliance with the SMB TMDL WLAs was if the standard was new, revised or newly
10 interpreted. 33 U.S.C. § 1313(e); Los Angeles Regional Water Quality Control Board
11 Resolution No. 2003-001, Attachment (compliance schedules for TMDLs may be included in
12 discharger's NPDES permit or WDRs only when implementing new, revised or newly
13 interpreted water quality standards). Since the SMB TMDL WLAs did not implement a new,
14 newly-interpreted or revised water quality standard,⁸ the Regional Board had no authority to
15 provide a schedule of compliance with the TMDL. Thus, for this additional reason, the County's
16 request for more time to achieve compliance is groundless.

17 **2. The Compliance Monitoring Sites are an Element of the SMB TMDL**
18 **Which Cannot Be Modified by the Permit.**

19 Moreover, the compliance monitoring sites which the County wants removed from the
20 Permit were part of the SMB TMDL when the TMDL became part of the Los Angeles Basin
21 Plan in 2003. Site SMB-MC-1 is historical site DHS003, site SMB-MC-2 is historical site S1,
22 site SMB-MC-3 is historical site DHS002, and site SMB-BC-1 is historical site S10. Santa
23 Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan (*hereinafter*
24 "Coordinated Shoreline Monitoring Plan"), at 3-30, 3-31. All four compliance monitoring sites
25 were included in the SMB Basin Plan amendment. SMB TMDL Basin Plan Amendment,
26 Attachment A, Table 7-4.2a. Clearly, the County's arguments to remove these compliance
27

28 ⁸ The bacteria water quality standards for marine waters designated for water contact recreation were adopted by the Regional Board in 2001 and became effective as a Basin Plan amendment in 2002.

1 monitoring sites from the Permit are aimed again at amending the Basin Plan incorporating the
2 SMB TMDL. As already explained, these arguments are misdirected because WDRs and
3 NPDES permits must comply with the Basin Plan and not amend it.

4 **3. The Sources of Bacteria are an Element of the SMB TMDL Which**
5 **Cannot Be Modified by the Permit.**

6 As recounted in the Petition, at the Permit amendment hearing the County introduced
7 evidence related to the sources of bacteria discharged to the Santa Monica Bay Beaches in an
8 attempt to convince the Regional Board to effectively reconsider the SMB TMDL. Petition, at 6-
9 7. This request is improper as the sources of bacteria are an element of the SMB TMDL as
10 incorporated in the Basin Plan. SMB TMDL Basin Plan Amendment, Attachment A, Table 7-
11 4.1. As already explained, the Regional Board did not have authority to reanalyze the TMDL but
12 instead had to ensure that the Permit was consistent with the TMDL as part of the Basin Plan.⁹

13 **C. The SMB TMDL Permit Amendment Is Consistent with the Malibu Creek**
14 **and Ballona Creek Bacteria TMDLs.**

15 The County argues that after incorporating the SMB TMDL, the Permit is inconsistent
16 with the Malibu Creek and Lagoon Bacteria Total Maximum Daily Load (“Malibu Creek
17 Bacteria TMDL”) and the TMDL for Bacterial Indicator Densities in Ballona Creek, Ballona
18 Estuary, and Sepulveda Channel (“Ballona Creek Bacteria TMDL”). The County’s claim of
19 inconsistency is another thinly-disguised improper collateral attack on the SMB TMDL Basin
20 Plan amendment.

21 Contrary to the County’s assertions, the SMB TMDL permit amendment is consistent
22 with the Malibu Creek and Ballona Creek Bacteria TMDLs. All three TMDLs have the same
23 numeric targets. See Los Angeles Regional Water Quality Control Board Resolution No. 06-
24 011, Attachment A; Resolution No. 2004-019R, Attachment A; Resolution No. 02-004,

25
26
27 ⁹ The TMDL specifically provided that “[w]ith the exception of isolated sewage spills, dry weather urban runoff
28 conveyed by storm drains and creeks is the primary source of elevated bacterial indicator densities to SMB beaches
during dry weather.” SMB TMDL Amendment, Attachment A, Table 7-4.1.

1 Attachment A. The summer dry weather WLAs of the three bacteria TMDLs are also identical –
2 zero allowable exceedances days. *Id.*¹⁰

3 The County's argument that certain compliance monitoring sites should be removed from
4 the SMB TMDL Permit amendment because they are affected by Malibu Creek and Ballona
5 Creek is also disingenuous. The County participated in the development of the Coordinated
6 Shoreline Monitoring Plan and thus agreed that the Plan would include the compliance
7 monitoring locations at Malibu Creek and Ballona Creek. *See* Coordinated Shoreline Monitoring
8 Plan (prepared by the Technical Steering Committee Co-Chairs City and County of Los
9 Angeles). Consequently, the County should now be precluded from arguing that these
10 monitoring sites must be excluded from the SMB TMDL permit amendment.

11 Most importantly, the monitoring sites which the County wants removed are part of the
12 SMB TMDL because they are located or are immediately upstream of very popular Santa
13 Monica Bay beaches. SMB-MC-1, SMB-MC-2 and SMB-MC-3 are all at Surfrider Beach, a
14 world-famous surfer beach; SMB-BC-1 is located upstream of Dockweiler State Beach. *See*
15 Coordinated Shoreline Monitoring Plan at 3-30, 3-31. The removal of SMB-MC-1, SMB-MC-2,
16 SMB-MC-3 and SMB-BC-1 from the SMB TMDL will clearly be overbroad and unjustified
17 because it would eliminate existing public health protections.

18 For all of the above reasons, the County's argument that the SMB TMDL Permit
19 amendment is inconsistent with the Malibu Creek and Ballona Creek Bacteria TMDLs should be
20 rejected.

21 **D. The County's Reliance on Certain State Board Precedential Decisions, EPA**
22 **Guidance on Regulating Stormwater, and the Recommendations of the**
23 **Storm Water Expert Panel is Misguided.**

24 The County's argument that the Regional Board's actions were inconsistent with certain
25 State Board precedent, EPA guidance, and the State Board stormwater expert panel
26 recommendations which all address stormwater discharges is misguided. Most conspicuously,
27

28 ¹⁰ Since the Malibu Creek Bacteria TMDL became effective as a Basin Plan amendment in January 2006 and compliance with its WLAs for summer dry weather must be achieved by January 2009, the County's arguments with respect to this TMDL will be moot very soon.

1 the cited guidance and administrative decisions do not apply to non-stormwater discharges so
2 they are inapposite given the County's challenge here to requirements applicable to non-
3 stormwater discharges to its beaches.

4 **1. Cited State Board Precedent Is Distinguishable.**

5 The County mistakenly relies on State Board Order No. WQ 2001-15, *In the Matter of*
6 *the Petitions of Building Industry Association of San Diego County and Western States*
7 *Petroleum Association* ("BIA Order") and State Board Order No. WQ 99-05, *Own Motion*
8 *Review of the Petition of Environmental Health Coalition* ("WQ 99-05 Order"). Neither of
9 these State Board Orders is applicable. As already explained, the SMB TMDL Permit
10 amendment furthers the implementation of the CWA's prohibition on non-stormwater
11 discharges. See Section A, *infra*. Yet the BIA Order, including the specific language cited by
12 the County, does not address non-stormwater discharges. BIA Order at 5-9. Similarly, the WQ
13 99-05 Order established the Receiving Water Limitations language for stormwater discharges to
14 be included in municipal stormwater permits and specifically focuses on revisions and
15 improvements of the Storm Water Quality Management Programs required by the permits. WQ
16 99-05 Order at 2-3. The BIA Order is also distinguishable because it did not involve a permit
17 amendment implementing a prohibition on certain discharges which is not only required by the
18 CWA but also contained in the Basin Plan.

19 In any case, as noted in Section A, *infra*, the "iterative approach" would not, as the
20 County appears to believe, provide it with a "safe harbor" from complying with water quality
21 standards as they apply to stormwater discharges. As such, even the County's interpretation of
22 the BIA Order does not provide any basis for the County's argument that its permit should veer
23 from the Basin Plan's requirements. While courts have determined that the "iterative approach"
24 does not excuse compliance with standards, in any case the BIA Order provides that "there may
25 be discharge prohibitions for particularly sensitive water bodies" and as against conditions of
26 nuisance. BIA Order at 9, fn. 18. So even if there were a cognizable difference between the
27 SMB TMDL and the otherwise applicable receiving water limitations, the SMB TMDL is
28 appropriate because it applies to Santa Monica Bay beaches, which were included in the

1 California list of impaired waters compiled under section 303(d) of the CWA due to their high
2 coliform levels.¹¹ Consequently, even if the *BIA Order* applied, Part 1.B.'s absolute prohibition
3 on summer dry weather discharges which cause or contribute to violation of the Permit's
4 Receiving Water Limitations in Part 2.5. is consistent with the State Board's precedent in the
5 *BIA Order*.

6 **2. The U.S. E.P.A. Guidance Provides No Support for the County's**
7 **Position.**

8 The U.S. E.P.A. guidance on which the County relies is inapplicable to the Permit
9 amendment incorporating the SMB TMDL. The guidance entitled "Establishing Total
10 Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and
11 NPDES Permit Requirements Based on Those WLAs" ("EPA Guidance") does not address non-
12 stormwater MS4 discharges but instead contains recommendations related to stormwater
13 discharges. Since the SMB TMDL was incorporated into the Permit to achieve compliance with
14 the CWA's section 402(p) non-stormwater discharge prohibition, the EPA Guidance does not
15 apply to the Permit amendment.

16 Assuming *arguendo* that the EPA Guidance applied to the discharges regulated by the
17 Permit amendment, the guidance itself explains that there is no legal requirement for consistency
18 with its recommendations. EPA Guidance, at 5-6 ("CWA provisions and regulations contain
19 legally binding requirements" while the recommendations in the guidance "are not binding;
20 indeed there may be other approaches that would be appropriate in particular situations"). Thus,
21 any argument that consistency of the Permit amendment with the EPA Guidance is necessary is
22 clearly incorrect. *See also City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.
23 App. 4th 1392, 1411-1412 (refusing to accept as conclusive authority relevant EPA guidance
24 containing a similarly-worded disclaimer and proceeding to analyze applicable federal law).

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26
27
28

¹¹ 1998 California 303(d) List and TMDL Priority Schedule (available at:
http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/303d/rb4-303d98.pdf).

1 **3. The County's Reliance on the Expert Panel's Stormwater**
2 **Recommendations Is Also Misguided.**

3 The County's argument that the Permit amendment should be consistent with the State
4 Board stormwater expert panel recommendations is similarly flawed. The expert panel's report
5 titled, "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water
6 Associated with Municipal, Industrial and Construction Activities" ("Expert Panel Report") does
7 not provide any recommendations on non-stormwater discharges. The panel's observations and
8 recommendations on municipal activities are specifically and exclusively concerned with
9 stormwater discharges. As already explained, however, the Permit amendment incorporated
10 limitations on non-stormwater discharges to implement section 402(p)'s prohibition on non-
11 storm water discharges into the MS4. Consequently, the Expert Panel's recommendations are
12 irrelevant in this instance.

13 **E. The County's Argument that the Permit Improperly Holds it Liable for**
14 **Other Dischargers' Pollution is Patently False.**

15 The County claims that footnote 3 of Part 1.B of the Permit appears to improperly hold it
16 responsible for other dischargers' pollution. Permit, at 22.¹² The Permit's terms belie that
17 assertion. While the Permit provides that "all permittees within a subwatershed of the Santa
18 Monica Bay Watershed Management Area are jointly responsible for compliance" with the
19 TMDL requirements (Permit, at 22, fn. 3), paragraphs 37 and 38 clearly describe how the
20 permittees can demonstrate that "their MS4 does not discharge dry weather flow into the Santa
21 Monica Bay." Permit, at 17. Indeed, "[a] Permittee would not be responsible for violations of
22 these provisions if the Regional Board Executive Officer determines that the Permittee has
23 adequately documented through a source investigation of the subwatershed . . . that bacterial
24 sources originating within the jurisdiction of the Permittee have not caused or contributed to the
25 exceedances of the Receiving Water Limitations." *Id.* at 18. Further, "[i]f the Regional Board
26 determines that Permittees in the relevant subwatershed have demonstrated that their MS4 does
27

28

12 The County refers to it as footnote 4; in the most recent Permit version on the Regional Board's website it is
footnote 3.

1 not discharge dry weather flow into Santa Monica Bay, those Permittees would not be
2 responsible for violations of these provisions even if the Receiving Water Limitations are
3 exceeded at an associated compliance monitoring site.” *Id.*

4 Given the Permittees’ knowledge of their MS4 and the land uses within their jurisdiction
5 balanced against the significant public health risk posed by bacterial exceedances at beaches,
6 these Permit provisions are reasonable and fair. Accordingly, there is nothing improper about
7 footnote 4 in the Permit.

8 **F. Adding the Words “Non-Storm Water” Is Unnecessary and Unjustified.**

9 The County’s request to add the words “non-storm water” to the SMB TMDL Permit
10 amendment is unnecessary, unjustified, and confusing.

11 By definition, the SMB TMDL WLAs apply only to non-stormwater MS4 discharges—
12 those occurring on summer dry weather days defined as days “with <0.1 inch of rain and those
13 days not less than 3 days after a rain day.” SMB TMDL Basin Plan Amendment, Attachment A,
14 Table 7-4.2a. The SMB TMDL’s definition of dry weather is derived from section 122.26 of
15 Title 40 of the Code of Federal Regulations which describes “measurable storm events” as
16 “greater than 0.1 inch rainfall.” 40 C.F.R. § 122.26(d)(2)(iii)(A)(2). The SMB TMDL was
17 incorporated into the Permit to eliminate summer dry weather discharges occurring in the
18 absence of precipitation and as Finding 32(a) accurately states, the SMB TMDL WLAs “do not
19 regulate the discharge of storm water.” *Id.* at 15; *see also* Transcript at 282:11-14 (testimony of
20 Xavier Swamikannu, Los Angeles Regional Water Quality Control Board). Since the SMB
21 TMDL Permit amendment already regulates only non-stormwater discharges, the County’s
22 persistent arguments that the words “non-storm water” should be added to the SMB TMDL
23 Permit amendment lack basis.

24 The County’s argument is, at bottom, an improper attempt to narrow the reach of the
25 SMB TMDL WLAs for summer dry weather by excluding certain non-stormwater discharges
26 from its scope under the pre-text that they are “storm water.” The County mistakenly asserts that
27 “[s]torm water within the meaning of the federal regulations and the Permit is . . . broader than
28 rainfall” because “[i]t includes surface run-off and drainage.” Petition, at 22. Contrary to the
County’s distorted interpretation, the definition of “stormwater” includes only discharges

1 occurring during measurable storm events. 40 C.F.R. § 122.26(d)(2)(iii)(A)(2); 55 Fed. Reg.
2 47990, 47995 (the definition of “storm water” excludes discharges “which are not in any way
3 related to precipitation events” such as street wash flows which are subject to the prohibition on
4 non-stormwater discharges). This definition clearly includes only flows resulting from
5 precipitation events. Therefore, non-stormwater discharges are discharges resulting from flows
6 in the absence of such storm events. Any attempt to imply otherwise contradicts the law and
7 would create vagueness and confusion.

8 The Regional Board acted reasonably in rejecting the County’s unnecessary and
9 unjustified attempt to add “non-storm water” to Part 1.B. and Part 2.5 of the Permit, and the
10 argument should be likewise rejected by the State Board.

11 **G. The Regional Board Complied with the Requirements of CEQA.**

12 The County’s assertions that the SMB TMDL Permit amendment should be set aside
13 because the Regional Board failed to comply with the Chapters 1 and 2.6 of the California
14 Environmental Quality Act (“CEQA”) lack merit. Chapter 1 contains the general policies of
15 CEQA while Chapter 2.6 consists of CEQA’s specific requirements related to environmental
16 review and documentation. The County’s arguments primarily focus on the alleged failure of the
17 Regional Board to comply with Chapter 2.6 by not preparing an environmental checklist or a
18 functionally equivalent document for the Permit amendment. Petition, at 22-24. Contrary to the
19 County’s assertions, Chapter 2.6 of CEQA does not apply to an NPDES permit amendment.
20 Moreover, the Regional Board has complied with the policies of Chapter 1 of CEQA.

21 Section 13389 of the California Water Code exempts NPDES permits from the
22 requirement to prepare an EIR. More importantly, as the California Court of Appeal held,
23 NPDES permits are not subject to Chapter 2.6 of CEQA because the NPDES program was
24 “never identified . . . as a . . . section 21080.5 certified program.” *County of Los Angeles*, 143
25 Cal.App.4th at 1007. *A fortiori*, the amendment of an NPDES permit to include the SMB TMDL
26 WLAs is also excluded from the requirements of CEQA and the Regional Board was not
27 required to conduct a limited environmental review of the SMB TMDL Permit amendment.

1 Consequently, the Regional Board was not required to prepare and approve any environmental
2 review document or checklist.

3 In addition, the Regional Board has complied with the applicable policies of Chapter 1,
4 sections 21000-21006, of CEQA. Thus, the Regional Board considered alternatives to the
5 proposed Permit amendment as required by section 21001 of CEQA. SMB TMDL Factsheet, at
6 13-16. The Regional Board complied with section 21003.1 of CEQA which mandates that
7 comments on the environmental effects of a project be made as early as possible in the review
8 process by soliciting public comments almost four months before the date of the Permit
9 amendment hearing, extending the deadline for comments per the public's request and holding a
10 public workshop to receive input from interested parties. *Id.* at 12-13. After receiving these
11 comments, Regional Board also considered qualitative factors as well as economic and technical
12 factors and benefits and costs of the Permit amendment pursuant to section 21001. *Id.* at 12, 16-
13 17. The Regional Board also considered the types of activities required to achieve compliance
14 with the Permit amendment. *Id.* at 11-12. Based on all the information before it, the Regional
15 Board adopted the staff recommendation and voted to amend the Permit to incorporate the
16 WLAs of the SMB TMDL. Clearly, Finding 39 that the "Regional Board has considered the
17 policies and requirements set forth in Chapter[] 1 . . . of CEQA" was supported by the evidence
18 and the record. Permit, at 18.

19 For the above-reasons the County's arguments that the Regional Board did not comply
20 with the requirements of CEQA in approving the Permit amendment are faulty and must be
21 rejected.

22 **H. Because the Permit Amendment Implements the Requirements of the CWA,**
23 **the Regional Board Was Not Required to Make Findings under**
24 **Sections 13241 or 13263 of the California Water Code.**

25 Section VIII of the Petition contains a list of findings which the County argues the
26 Regional Board should have made pursuant to the Water Code. Petition, at 24-26. Contrary to
27 the County's arguments, none of these findings were necessary to support the Permit amendment
28 incorporating the SMB TMDL WLAs for summer dry weather. Under established California
law, "whether the Los Angeles Regional Board should have complied with sections 13263 and

1 13241 of California's Porter-Cologne Water Quality Control Act by taking into account
2 'economic considerations,' such as the costs the permit holder would incur to comply with the
3 numeric pollutant restrictions set out in the permits, depend on whether those restrictions met or
4 exceeded the requirements of the federal Clean Water Act." *City of Burbank v. State Water*
5 *Resources Control Board et al.* (2005) 35 Cal. 4th 613, 627.

6 As discussed in detail in Section A, *infra*, the SMB TMDL Permit amendment is a means
7 to achieve compliance with the unambiguous mandate of the CWA to effectively prohibit non-
8 stormwater discharges. The amendment also was necessary to comply with the WLA established
9 for the County in the SMB TMDL, another federal requirement. 40 C.F.R. § 122.44
10 (d)(1)(vii)(B). Consequently, under *City of Burbank*, the Regional Board was not required to
11 make any of the findings under sections 13241 and 13263 of the California Water Code.

12 **I. The County Was Accorded a Fair Hearing.**

13 The County's argument that it was not accorded a fair hearing has no legal or factual
14 basis.

15 Adjudicative hearings under Section 648.5 of the Title 23 of the California Code of
16 Regulations are not court hearings. Adjudicative hearings are to be "conducted in a manner as
17 the Board deems most suitable to the particular case with a view toward securing relevant
18 information expeditiously without unnecessary delay and expense to the parties and to the
19 Board." 23 C.C.R. § 648.5(a). The County was aware of the time it would have to present its
20 case and conduct cross-examination well in advance of the Regional Board hearing. *See* Letter
21 from Jonathan Bishop, Regional Board Executive Officer to Interested Parties, dated September
22 8, 2006. At the hearing, the County did in fact present evidence and cross-examine witnesses.
23 In fact, the County was afforded the most time – 2 hours and 30 minutes – at the hearing: ten
24 minutes for opening statement, one-and-a-half hours to present its case, thirty minutes for cross-
25 examination and twenty minutes for a closing statement. By contrast, the Regional Board had
26 only a total of one hour and thirty-five minutes and the Environmental Groups had a total of one
27 hour and fifty-five minutes. Clearly, the County had ample time to present its case and cannot
28 argue that it was not afforded a fair hearing on that basis.

1 The County's contention that it was somehow prejudiced by the Regional Board's
2 disclosure of the record three business days before the hearing is also incorrect. The Regional
3 Board would have been within its right to receive certain new evidence into the record at the
4 hearing. 23 C.C.R. § 648.3 (public records and other documents prepared and published by a
5 public agency may be received in evidence by reference). Yet the Regional Board relied only on
6 documents it had in fact disclosed that it intended to rely on by posting them on its website
7 before the hearing. Letter from Jonathan Bishop, Regional Board Executive Officer, to
8 Interested Parties, dated September 8, 2006. Evidently, the County was aware of all the
9 documents which the Regional Board posted on its website on September 8, 2006 well before
10 their disclosure. Transcript, at 26:18-33:3. Thus, the County's arguments that it was not
11 accorded a full and fair hearing by the Regional Board are meritless.

12 **V. CONCLUSION**

13 All arguments presented in the Petition lack legal and factual basis. Because the
14 Regional Board's action was appropriate and proper as required by the law, the Petition should
15 be DENIED.

16
17 Respectfully submitted,

18
19 Dated: November 20, 2008

By:

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10 STATE OF CALIFORNIA
11 STATE WATER RESOURCES CONTROL BOARD

12 In the Matter of the Petition of THE COUNTY) SANTA MONICA BAYKEEPER, NATURAL
13 OF LOS ANGELES AND THE LOS) RESOURCES DEFENSE COUNCIL AND
14 ANGELES COUNTY FLOOD CONTROL) HEAL THE BAY'S RESPONSE TO LOS
15 DISTRICT FOR REVIEW OF CALIFORNIA) ANGELES COUNTY'S RENEWAL OF
16 REGIONAL WATER QUALITY CONTROL) PETITION FOR REVIEW (SWRCB/OCC
17 BOARD, LOS ANGELES REGION, ORDER) FILE A-1780) AND SUPPLEMENTAL
18 NO. R4-2006-74) STATEMENT OF POINTS AND
19) AUTHORITIES IN SUPPORT OF PETITION
20) FOR REVIEW
21)
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24)
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19 **I. INTRODUCTION**

20 The County of Los Angeles and the Los Angeles County Flood Control District's
21 (collectively "County") attempt to add new issues and reinstate their Petition almost two years
22 after the Petition was filed in October 2006 is a last-minute desperate effort to evade their
23 responsibilities under the Los Angeles Regional Water Quality Control Board ("Regional
24 Board") Order 01-182, NPDES Permit No. CAS004001, Waste Discharge Requirements for
25 Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles and the
26 Incorporated Cities Therein, Except the City of Long Beach as amended on September 14, 2006
27 ("Permit"). The County's Supplemental Statement of Points and Authorities in Support of
28 Petition for Review (SWRCB/OCC File A-1780) ("Supplemental Statement") should be stricken

1 because the County waived the arguments made therein. Moreover, both the Petition and the
2 Supplemental Statement are barred by the equitable doctrines of laches and unclean hands. For
3 these reasons, the Supplemental Statement and the Petition should be dismissed.

4 **II. BACKGROUND**

5 On September 14, 2006 the Regional Board held an adjudicative hearing to consider the
6 incorporation of the waste load allocations ("WLAs") of the Santa Monica Bay Beaches Bacteria
7 Total Maximum Daily Load for summer dry weather ("SMB TMDL") into the Permit. The
8 hearing was held per the request of the County and the Santa Monica Baykeeper, Natural
9 Resources Defense Council and Heal the Bay (collectively "Environmental Groups"). Regional
10 Board Meeting Transcript (September 14, 2006) ("Transcript"), at 12:20-13:8. At the hearing,
11 counsel for the County made numerous procedural and evidentiary motions and objections. *Id.*
12 at 26:3-52:14; 90:13-93:24; 226:7-18; 302:19-303:12; 307:16-19; 315:8-316:9; 318:21-23. None
13 of these objections or motions, including the ones related to the County's due process rights,
14 focused on the role of Staff Counsel Michael Levy at the hearing. The issue was first raised by
15 Mathew Cohen, attorney for other permittees, immediately prior the County's closing statement.
16 Transcript, at 321:8-324:7.

17 Within 30 days after the Regional Board's unanimous vote in favor of the Permit
18 amendment, the County filed its Petition to the State Water Resources Control Board ("State
19 Board") challenging the Permit amendment incorporating the SMB TMDL WLAs. Among other
20 allegations, the Petition alleged violations of due process consisting of the Regional Board's
21 purportedly unlawful restriction of the County's right to present evidence and cross-examine
22 witnesses. County Petition for Review, Exhibit B, Statement of Points and Authorities ("Petition
23 Brief"), at 26-29. The Petition did not raise any issues or arguments related to Staff Counsel
24 Levy's role at the Permit amendment hearing.

25 Per the County's request,¹ the State Board placed the Petition in abeyance for almost two
26 years until September 12, 2008 when the County requested the Petition be placed on active
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¹ The County's written request for a stay required by the regulations could not be located. See 23 C.C.R. § 2050.5(d)(1) ("[a] request . . . to hold a petition in abeyance must be in writing").

1 calendar. Letter from Howard Gest to Elizabeth Jennings, dated September 12, 2008. Together
2 with its request to reinstate the Petition, the County submitted the Supplemental Statement
3 purporting to “provide additional argument on the unfairness of the hearing arising from the
4 Regional Board’s counsel’s simultaneous service as counsel to the Regional Board itself and as
5 counsel to Regional Board staff . . .” Supplemental Statement, at 1. This was the first time the
6 County presented any allegations that its due process rights were violated because of Staff
7 Counsel Levy’s role at the Permit amendment hearing.

8 **III. DISCUSSION**

9 **A. The County Has Waived the Arguments Presented in the Supplemental** 10 **Statement.**

11 The County’s failure to raise its objections to Staff Counsel Levy’s role at the Permit
12 amendment hearing and in the Petition constitutes a waiver of the County’s argument in the
13 Supplemental Statement. Because the County knowingly and intelligently failed to raise its
14 objections it is now precluded from raising these objections on appeal.

15 A party to an administrative hearing “may waive a right conferred on the person by the
16 administrative adjudication provisions of the Administrative Procedure Act.” Govt. Code §
17 11415.40 (applicable to state and regional water board adjudicative proceedings via section 648
18 of Title 23 of the California Code of Regulations). The right conferred to a party under sections
19 11425.10 and 11425.30 of the Administrative Procedure Act (“APA”) is not exempt from the
20 APA’s waiver provision. Govt. Code § 11415.40. As the Law Revision Commission explained,
21 a right may be waived in writing or by inaction. *Id.*, Law Revision Commission Comments
22 (1995). A waiver by inaction “may be the procedural result of a failure to act.” *Id.* It is
23 undisputed that the County failed to raise its objection to Staff Counsel Levy’s role at the Permit
24 amendment hearing, thus the County is deemed to have waived this argument in this appeal.

25 Assuming *arguendo* that the County had a right here, and did not waive its objection at
26 the hearing, the County clearly waived the argument by failing to then raise it in its Petition. The
27 objection was raised immediately after the Environmental Groups’ concluded cross-examination
28 of Mr. Daniel Lafferty, employee of the County, during which County counsel participated

1 attentively and actively by objecting several times. Transcript, at 315:8-318:23. The County
2 made its closing statement right after Mr. Cohen made the objection. *Id.* at 324:16-17. On these
3 facts, it is beyond any doubt that the County and its counsel heard Mr. Cohen's objection.
4 Despite its awareness of the objection, the County did not pursue in its Petition any argument
5 that its due process rights were violated because of the allegedly dual role Staff Counsel Levy
6 played at the hearing. *See* Petition Brief, at 26-29. Nor did the County supplement its Petition to
7 include this argument within the 30-day deadline.²

8 Just as an appellant in court waives an argument by failing to raise it in an opening brief,
9 the County waived its due process argument related to Staff Counsel Levy by failing to raise it in
10 its Petition. *See, e.g., Dieckmeyer v. Redevelopment Agency of City of Huntington Beach* (2005)
11 127 Cal.App.4th 248, 260. Courts find that "[o]bvious reasons of fairness militate against
12 consideration of an issue raised initially in the reply brief of an appellant"; certainly there are
13 even more compelling fairness considerations that preclude the State Board from considering an
14 issue not raised until almost two years after the opening Petition. *Varjabedian v. City of Madera*
15 (1977) 20 Cal.3d 285, 295, fn. 11 (en banc).

16 Because the County waived its due process argument related to Staff Counsel Levy's
17 role, the County is now barred from raising the issue nearly two years after the Regional Board
18 adjudicative hearing and the filing of the Petition. For these reasons, the Supplemental
19 Statement should be dismissed.

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² A petition challenging a regional board's action or failure to act must be filed within 30-days of the action or
failure to act. Wat. Code § 13320(a); 23 C.C.R. § 2050 (a). The petition must include a "full and complete
statement of the reasons the action or failure to act was inappropriate and improper." 23 C.C.R. § 2050(a)(4).

1 **B. The County's Petition and Supplemental Statement Are Barred by the**
2 **Equitable Doctrine of Unclean Hands.**

3 The County's petition for review should be barred by the equitable doctrine of "unclean
4 hands." "Unclean hands" is an absolute defense to legal and equitable causes of action.
5 *Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 56. This doctrine requires
6 "a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with
7 clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his
8 claim." *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978. So,
9 for instance, a party's attempt to modify a judgment issued against it *after* the party has violated
10 the judgment is barred by the party's "unclean hands." *Residents for Adequate Water v.*
11 *Redwood Valley County Water District* (1995) 34 Cal.App.4th 1801, 1805, fn. 3.

12 Similarly, the County's attempt to challenge the SMB TMDL Permit amendment *after* it
13 has been found to be in violation of its terms cannot be allowed. The data submitted in the
14 permittees' own shoreline and harbor monitoring reports for the summer dry weather compliance
15 period revealed violations of the SMB TMDL WLAs, exposing swimmers and beachgoers to
16 harmful bacterial pollution. See Notices of Violation to Los Angeles County and Los Angeles
17 County Flood Control District from the Regional Board (March 4, 2008).³ The violations were
18 extensive, "including 1,603 instances where the bacteria water quality objectives set to protect
19 water contact recreation were exceeded" (for combined Santa Monica Bay beaches and Marina
20 del Rey Harbor to which the County discharges via its MS4). *Id.*

21 This is a textbook situation where the doctrine of unclean hands should apply. "The
22 doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy." *Kendall-*
23 *Jackson Winery*, 76 Cal.App.4th at 978. Yet the County has consistently violated the very rule
24 under which it seeks a remedy by having the rule overturned. It is these facts coupled with the
25 County's attempt to belatedly renew its challenge of the Permit amendment and bring new issues
26 with the Supplemental Statement that is the quintessential example of "unclean hands."
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³ Available at www.swrcb.ca.gov/rwqcb4/water_issues/programs/enforcement/nov/index.shtml.

1 **C. The County's Petition and Supplemental Statement Are Barred by the**
2 **Equitable Doctrine of Laches.**

3 Similarly, the County's Petition and Supplemental Statement should be barred by the
4 equitable doctrine of laches. Laches "consists of a failure on the part of a plaintiff to assert his
5 rights in a timely fashion accompanied by a period of delay with consequent results prejudicial to
6 the defendant." *Rouse v. Underwood* (1966) 242 Cal.App.2d 316, 323; *see also Conti v. Board*
7 *of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359 (laches consists of "unreasonable delay
8 plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant
9 resulting from the delay").

10 First, the fact that the County waited two years to re-instate its Petition and raise new
11 claims itself constitutes unreasonable delay. Moreover, there have been important changed
12 circumstances that militate in favor of the application of laches. After the County filed and put
13 its Petition into abeyance, the California Court of Appeals issued its revised and final decision
14 *County of Los Angeles v. State Water Resources Control Board* effectively rejecting the majority
15 of the County's arguments raised in the original Petition to the State Board. A critical regulatory
16 system has taken affect and the public relies on it to protect health and the environment.
17 Regional Board staff resources have been refocused on other matters.

18 Moreover, the County's actions during the Petition stay period indicated that the County
19 appeared to acquiesce to the Permit amendment and had all but abandoned its challenge of the
20 SMB TMDL incorporation into the Permit. For instance, the County continued to submit
21 monitoring reports required by the Permit amendment. *See, e.g.,* Los Angeles County 2007-08
22 Stormwater Monitoring Report, Appendix D. And, the County did not appeal the incorporation
23 of the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria Total Maximum Daily
24 Load ("MDR TMDL") into the Permit despite the fact that the MDR TMDL Permit amendment
25 relied on similar findings as the SMB TMDL and resulted in a prohibition on exceedances of
26 bacteria standards as the SMB TMDL. Permit, at 15-18, 24. In fact, as part of the findings to
27 supporting the MDR TMDL Permit amendment, the Regional Board acknowledged the County's
28 actions in support of the TMDL, including conducting studies, preparing reports and

1 implementing various Best Management Practices. *Id.* at 16. Thus, the County neglected its
2 rights by failing to prosecute its Petition during this period.⁴

3 Thus, in the past two years, the County has failed to prosecute its Petition, supporting a
4 reliance on behalf of the public that their health will be better protected at area beaches. In this
5 connection, the Regional Board issued numerous notices of violations of the Permit amendment
6 to the County and other permittees on that relies on the incorporation of the SMB TMDL into the
7 Permit in order to protect public health. The County's unreasonable delay, coupled with its
8 apparent acquiescence during the intervening years, the change of circumstances, and the
9 importance of the SMB TMDL Permit amendment for public health justifies the application of
10 laches to dismiss the County's Petition and Supplemental Statement.

11 **IV. CONCLUSION**

12 For the reasons stated above, the County's Petition and Supplemental Statement must be
13 dismissed.

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15 Respectfully submitted,

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17 Dated: November 20, 2008

By:

Tatiana K. Gaur

SANTA MONICA BAYKEEPER

Tatiana Gaur, Esq.

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28 ⁴ Specifically regarding the Supplemental Statement, the County failed to allege any due process violations related to the role of Staff Counsel Levy both in the original Petition and for nearly two years thereafter. The Environmental Groups were not made aware that the County intended to raise a due process argument based on Staff Counsel Levy during the lengthy stay of the Petition.



February 6, 2009

Via Certified Mail and E-mail

Alex P. Meyer
Staff Counsel IV
Office of Chief Counsel
State Water Resources Control Board
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

Re: Environmental Groups' Request for State Board to Consider Supplemental Evidence and Request for Administrative Notice of Certain Court Filings:
SWRCB/OCC File No. A-1780, Petition of County of Los Angeles and Los Angeles County Flood Control District for Review of Order No. R4-2006-0074, amending Order No. 01-182 – Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, and Incorporated Cities Therein, Except the City of Long Beach

Dear Mr. Meyer,

Santa Monica Baykeeper, Natural Resources Defense Council and Heal The Bay (collectively "Environmental Groups"), interested parties to the above-referenced petition for review, respectfully request that the State Water Resources Control Board ("State Board") supplement the administrative record pursuant to section 13320(b) of the California Water Code and section 2050.6 of Title 23 of the California Code of Regulations, as well as take administrative notice of several court filings pursuant to section 648.2 of Title 23 of the California Code of Regulations. The documents included in this request are relevant to the Los Angeles County and Los Angeles County Flood Control District (collectively "Petitioners") Petition for Review (October 16, 2006), request for removal of petition stay and Supplemental Statement of Points and Authorities in Support of Petition for Review (both dated September 12, 2008) filed in this matter.

Request to Supplement the Administrative Record – Exhibits A through F

Section 13320 (b) of the California Water Code provides that, when reviewing a Regional Board action, "[t]he evidence before the state board shall consist of the record before the regional board, and any other relevant evidence which, in the judgment of the state board, should be considered to effectuate and implement the policies of this division." Wat. Code § 13320(b). The State Board may consider evidence not previously provided to the regional board as long as the person requesting review of the evidence provides a detailed statement of the nature of the evidence, the facts to be proved, and the reasons why the evidence could not previously have been submitted. 23 C.C.R. § 2050.6(a); *In re Humboldt Watershed Council*, State Board Order



WQ 2005-0009 (June 16, 2005), at fn. 15 (State Board accepted supplemental evidence into the record when a timely request was made that met the requirements of the regulations).

Environmental Groups request that the State Board accept into the record as supplemental evidence the following six documents: notices of violations issued by the Los Angeles Regional Water Quality Control Board ("Regional Board") to the Petitioners; Water Code § 13383 orders issued by the Regional Board to Petitioners; and the Petitioners' 2006-2007 and 2007-2008 storm monitoring reports for Santa Monica Bay beaches. These documents postdate the original Petition for Review filed in 2006 and are thus not part of the administrative record for the challenged Regional Board Order No. R4-2006-0074 amending Regional Board Order No. 01-182, NPDES Permit No. CAS004001 ("Permit") to incorporate the Santa Monica Bay Beaches Bacteria Total Maximum Daily Load for summer dry weather ("SMB TMDL"). The documents are highly relevant to the State Board's adjudication of this matter for the specific reasons provided below.

1. *Exhibit A* - Regional Water Quality Control Board, Los Angeles Region "Notice of Violation (Order No. 01-182 As Amended By Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190107099)" issued to the County of Los Angeles (March 4, 2008).
2. *Exhibit B* - Regional Water Quality Control Board, Los Angeles Region "Notice of Violation (Order No. 01-182 As Amended By Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190107099)" issued to the County of Los Angeles Flood Control District (March 4, 2008).

These two notices of violation are highly relevant and demonstrate that Petitioners' renewal of the Petition and filing of the Supplemental Statement *after* the Petitioners were found in violation of the permit amendment they are challenging is identical to the very behavior barred by the "unclean hands" doctrine. See *Environmental Groups' Response to Renewal of Petition and Supplemental Statement*, p. 5 (Nov. 20, 2008). In addition, the documents are relevant and probative of the existing conditions associated with dry weather discharges from Petitioners' storm drain system. The notices of violation document aspects of the pollution problem associated with Petitioners' dry weather pollution discharges and demonstrate the need recognized by the Regional Board in Order No. R4-2006-0074 to address these pollution discharges. These notices of violation should be considered by the State Board in order to effectuate and implement the overarching policies established by the Porter-Cologne Act to protect the use and enjoyment of the State's waters, including Santa Monica Bay's shoreline and beaches, to regulate discharges to "attain the highest water quality which is reasonable," and to protect the quality of waters in the state from degradation. Wat. Code §§ 13320(b), 13000. Where, as here, Petitioners have held a petition for review in abeyance for two years, the State Board's effort to protect the State's waters and carry out its authority to review the Regional Board's actions should be based on current information showing the on-the-ground impacts of regulated pollution discharges, rather than exclusively relying on the Regional Board's now two-year old administrative record. The notices of violation did not exist at the time of the Regional

Board's September 14, 2006 hearing at which Order No. R4-2006-0074 was adopted and, accordingly, could not have been submitted at that time.

3. *Exhibit C* - Regional Water Quality Control Board, Los Angeles Region "Order Pursuant to California Water Code Section 13383 (Regarding Violations of Order No. 01-182 As Amended By Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190107099)" issued to the County of Los Angeles (March 4, 2008).
4. *Exhibit D* - Regional Water Quality Control Board, Los Angeles Region "Order Pursuant to California Water Code Section 13383 (Regarding Violations of Order No. 01-182 As Amended By Order No. R4-2006-0074 and Order No. R4-2007-0042, NPDES Permit No. CAS004001, WDID 4B190107099)" issued to the County of Los Angeles Flood Control District (March 4, 2008).

The accompanying Section 13383 Orders issued to Petitioners are relevant for the same reasons identified above for Exhibits A and B. The Section 13383 Orders also demonstrate how paragraphs 37 and 38 of the challenged Permit amendment, outlining the mechanism through which permittees can establish that their MS4 does not discharge in violation of the SMB TMDL, are being implemented by the Regional Board. These documents refute Petitioners' objection to footnote 3 of Part 1.B of the Permit as improperly holding them responsible for other dischargers' pollution. See *Environmental Groups' Response to Petition*, p. 14 (Nov. 20, 2008). Like the notices of violations, the Section 13383 Orders were not issued until after the Regional Board's September 14, 2006 hearing and could not have been submitted at that time.

5. *Exhibit E* - Santa Monica Bay Shoreline Monitoring Municipal Separate Storm Sewer System (MS4) Report (July 1, 2006 - June 30, 2007) (Los Angeles County Department of Public Works).
6. *Exhibit F* - Santa Monica Bay Shoreline Monitoring Municipal Separate Storm Sewer System (MS4) Report (July 1, 2007 - June 30, 2008) (Los Angeles County Department of Public Works).

The monitoring data documenting pollutant levels from the very drains at issue in Petitioners' appeal are highly probative of the existing conditions associated with dry weather discharges from Petitioners' storm drain system, the extent of the pollution problem associated with Petitioners' dry weather discharges, and the need recognized by the Regional Board for Order No. R4-2006-0074 to address these discharges. This current data is essential for the State Board to assure it is effectuating and implementing the Porter-Cologne Act's policies and applicable water quality objectives in and on Santa Monica Bay and its beaches and not just as compared to the now two-year old administrative record. The reports in which this data were provided to the Regional Board did not exist at the time of the Regional Board's September 14, 2006 hearing and could not have been submitted at that time.

Request for Administrative Notice – Exhibits G through I

The State Board may take administrative notice of “such facts as may be judicially noticed by the courts of this state.” 23 C.C.R. § 648.2; *In re License 1050 et al.*, State Board Order WR 99-012 (Dec. 28, 1999), at fn. 4. Courts may take judicial notice of the “[r]ecords of . . . any court of this state.” Evid. Code § 452(d). Courts have found that briefs submitted in court, and court decisions, are proper subjects for judicial notice. See *Titolo v. Cano* (2007) 157 Cal.App.4th 310, 322, fn.4. Such notice of court records is especially appropriate to “determine whether to preclude relitigation” on grounds of *res judicata* or collateral estoppel, which is the reason for the Environmental Groups’ request for administrative notice of the three court documents described below. See *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 90; see also *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 486.

1. *Exhibit G* - Superior Court of the State of California, County of Los Angeles – Central Civil West Courthouse. Statement of Decision from Phase I Trial on Petitions for Writ of Mandate, Lead Case No. BS 080548 (March 24, 2005).

We request that the State Board take administrative notice of this court record because it establishes that Petitioners’ arguments regarding the iterative approach are precluded by principles of collateral estoppel or *res judicata*. The Los Angeles Superior Court ruling demonstrates that Petitioners have already once argued that the Permit’s prohibition of discharges causing and contributing to violations of water quality standards are subject to and limited by the iterative approach or the MEP standard. Exhibit G, p. 5 (“[T]he Court rejects Petitioner’s assertion that the MEP standard is the sole standard that applies to municipal storm water discharges and their related contention that MEP is a substantive upper limit on requirements that can be imposed to meet water quality standards.”) Petitioners’ arguments were squarely rejected by the court. *Id.*, p. 7 (“In sum, the Regional Board acted within its authority when it included Parts 2.1 and 2.2 in the Permit without a ‘safe harbor,’ whether or not compliance therewith requires efforts that exceed the ‘MEP’ standard.”) Because the Petition for Review presents the same arguments regarding the Permit requirements, the State Board should consider Exhibit G in order to determine whether Petitioners’ arguments are barred by principles of collateral estoppel or *res judicata*.

2. *Exhibit H* - Appellants County of Los Angeles’ and Los Angeles County Flood Control District’s Opening Brief in *County of Los Angeles, et al. v. California Regional Water Quality Control Board, Los Angeles Region*, California Court of Appeal No. B184034 (Feb. 14, 2006).

We request that the State Board take administrative notice of this document because it also demonstrates that Petitioners have already presented the same arguments regarding the role of the iterative approach which they now seek to reargue. In their Petition for Review, Petitioners assert that “[o]n September 14, 2006, the Regional Board amended the permit and, for the first time, required municipal dischargers to strictly comply with a set of water quality objectives outside of the ‘iterative process.’” *Petition for Review*, p. 2 (emphasis added). Petitioners’ briefing filed in their earlier challenge of the Permit proves that basic premise of the

Petition for Review is incorrect. Petitioners' request to condition the Permit's mandate for discharges to comply with standards in Part 2 by the Permit's iterative process in Part 2.3 is inconsistent with their previous admission in the earlier Permit litigation that the Permit's iterative process does not qualify or condition the Permit's separate mandate that permittees' discharges do not cause or contribute to an exceedance of water quality standards. See Environmental Groups' Response to Petition, pp. 6-7 (Nov. 20, 2008). As Petitioners state in their opening appellate brief, during the 2001 Permit proceedings Petitioners requested "that the Regional Board clarify or modify the Permit to provide that compliance with Part 2.3 constitutes compliance with Part 2. The Regional Board rejected that request." Exhibit H, p. 27. See also *id.* at 27, n. 18, 29-30, 43. Ultimately, Petitioners' effort to water down the Permit's mandate to comply with water quality standards, as argued in Exhibit H, was rejected by the Court of Appeal.

3. *Exhibit I - California Court of Appeal, Second Appellate District, County of Los Angeles v. California State Water Resources Control Board*, Case No. B184034 (Oct. 5, 2006) (Slip Opinion).

The State Board should take administrative notice of this court record because it establishes that Petitioners lost their iterative approach argument on appeal and are now barred from reasserting it in their State Board Petition for Review by *res judicata* and collateral estoppel principles. Exhibit I affirms the plain language of the Permit as requiring compliance with water quality standards, not simply an "iterative" effort to do so. Exhibit I, p. 27 ("Part 2.1 of the permit, which involves receiving water restrictions, prohibits all water discharges which violate water quality standards or objectives regardless of whether the best management practices are reasonable"). The Court of Appeal then goes on to reject each of the County and District's challenges to that compliance mandate. *Id.*, pp. 27-31. Thus, Exhibit I demonstrates that Petitioners already have presented their iterative approach arguments and the Court of Appeal rejected those arguments. The Court of Appeal's ruling was not issued at the time of the Regional Board's September 2006 hearing and could not be submitted to the Regional Board at that time. The State Board should consider Exhibit I in order to determine whether Petitioners arguments are barred by *res judicata* or otherwise already considered and rejected.

Based on the detailed statements provided above, the Environmental Groups respectfully request the State Board to supplement the administrative record and take administrative notice of the above-listed documents.

Sincerely,



Tatiana Gaur, Esq.
Santa Monica Baykeeper



Alex P. Meyer
February 6, 2009
Page 6

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EXHIBIT A

*Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice*



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful
320 W. 4th Street, Suite 200, Los Angeles, California 90013
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Arnold Schwarzenegger
Governor

March 4, 2008

Mr. William T. Fujioka
Chief Executive Officer
County of Los Angeles
500 West Temple Street, Room 713
Los Angeles, CA 90012

VIA CERTIFIED MAIL

NOTICE OF VIOLATION (ORDER NO. 01-182 AS AMENDED BY ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID 4B190107099)

Dear Mr. Fujioka:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the County of Los Angeles is a Permittee.

BACKGROUND

The LA MS4 Permit includes Discharge Prohibitions, Receiving Water Limitations, and a Monitoring and Reporting Program, among other requirements. Under Part 1, Discharge Prohibitions, the LA MS4 Permit requires that the Permittees "effectively prohibit non-storm water discharges into the MS4 [municipal separate storm sewer system] and watercourses," except under limited circumstances, as specified in Part 1. Under Part 2, Receiving Water Limitations, the LA MS4 Permit prohibits "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives."

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the MS4 that cause or contribute to exceedances of the bacteria RWLs.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay and Marina del Rey Harbor, navigable waters of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline and harbor water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay and within Marina del Rey Harbor. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

VIOLATIONS OF RECEIVING WATER LIMITATIONS

The County of Los Angeles is hereby notified that technical staff has concluded that the County is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline and harbor monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Parts 2.5 and 2.6 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at 29 shoreline and harbor monitoring sites located along Santa Monica Bay beaches and within Marina del Rey Harbor to which the County of Los Angeles discharges via the MS4, on 923 days, which included 1,603 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are summarized in Table 1, detailed in the attachments, and incorporated herein by reference. The County of Los Angeles is jointly responsible for violations at these monitoring sites along with the other Permittees with land area within the watersheds draining to these sites.

CIVIL LIABILITY

Pursuant to CWC § 13385, the County of Los Angeles is subject to penalties of up to \$10,000 for each day in which a violation of RWLs occurs. These civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The County of Los Angeles may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above.

To ensure that the causes of the violations are identified and abated, enclosed herewith, please find an Order directing the County of Los Angeles to submit a variety of reports pursuant to CWC § 13383. Specifically, these reports shall provide an evaluation and documentation of the causes of these violations, remedial actions to date, and the County's plans for additional

California Environmental Protection Agency



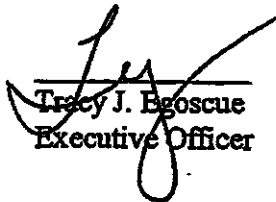
Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

March 4, 2008

corrective and preventative actions to bring discharges from the MS4 into prompt compliance with the bacteria RWLs applicable to the Santa Monica Bay and Marina del Rey Harbor.

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosures: Table 1
Attachments 1-18, 21, 34-43
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Mr. Jan Takata, Chief Executive Office, County of Los Angeles
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency

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TABLE 1

LOS ANGELES COUNTY
SUMMARY OF VIOLATIONS OF BACTERIA
RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042

Site ID	Single Sample RWL Violations				30-day Geometric Mean RWL Violations			Total RWL Violations by Site	Total Days of Violations by Site
	Total Colliform	Fecal Colliform	Enterococcus	Total Colliform (Fecal:Total Colliform Ratio > 0.1)	Total Colliform	Fecal Colliform	Enterococcus		
MdRH-1	0	9	13	9	0	22	32	85	42
MdRH-2	0	2	4	1	0	0	0	7	6
MdRH-3	0	1	0	1	0	0	0	2	1
MdRH-5	0	3	2	1	28	26	2	62	29
MdRH-6 (D)	0	0	0	0	12	0	0	12	12
MdRH-6 (S)	1	0	0	0	49	0	0	50	49
MdRH-7	0	2	0	2	37	12	0	53	38
MdRH-9 (S)	0	1	1	0	0	0	0	2	1
SMB 1-06	0	1	2	1	0	0	0	4	2
SMB 1-07	1	1	4	1	0	0	45	52	47
SMB 1-08	0	1	1	1	0	0	0	3	1
SMB 1-09	1	1	4	1	0	0	32	39	34
SMB 1-10	0	1	4	3	19	0	71	98	74
SMB 1-11	0	0	1	0	0	0	0	1	1
SMB 1-12	11	9	32	8	129	33	197	419	197
SMB 1-13	1	0	4	1	0	0	41	47	41
SMB 1-18	1	6	6	4	0	0	0	17	10
SMB 2-01	10	9	19	3	48	40	69	198	75
SMB 2-07	0	1	8	1	0	0	0	10	10
SMB 4-01	0	1	0	1	0	0	0	2	1
SMB 5-02	6	7	10	5	0	0	11	39	21
SMB 5-03	0	0	0	1	0	0	0	1	1
SMB 6-01	0	2	4	2	0	0	0	8	4
SMB 6-05	1	1	0	1	0	0	0	3	3
SMB 7-07	0	0	4	0	0	0	5	9	9
SMB BC-01	30	15	7	8	113	36	0	209	119
SMB MC-01	0	1	0	0	4	1	13	19	14
SMB MC-02	7	25	9	18	28	37	8	132	62
SMB MC-03	0	0	3	1	0	0	16	20	19
Totals	70	100	142	75	467	207	542	1603	923

ATTACHMENTS

**VIOLATIONS OF BACTERIA RECEIVING WATER LIMITATIONS BY
SHORELINE AND HARBOR MONITORING SITES**

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-1, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/15/2007				1100			
8/22/2007			190				
8/25/2007			360				
9/1/2007		3400	830	4200			
9/4/2007		740		1700			
9/5/2007			500	1200			
9/6/2007			410	1500			36
9/7/2007		1500	410	3000			42
9/8/2007		4200	1700	5900			52
9/9/2007							55
9/10/2007							55
9/11/2007			140				57
9/12/2007		1700		1700			61
9/13/2007							58
9/14/2007		430	110				58
9/15/2007			290			204	67
9/16/2007						214	72
9/17/2007						224	72
9/18/2007						214	68
9/19/2007						214	66
9/20/2007						214	66
9/21/2007						214	64
9/22/2007						225	69
9/23/2007						238	70
9/24/2007						233	64
9/25/2007						233	64
9/26/2007						233	64
9/27/2007						226	64
9/28/2007						239	68
9/29/2007						246	71
9/30/2007						263	71
10/1/2007						216	59
10/2/2007		430				223	56
10/3/2007						228	55
10/4/2007						215	54
10/5/2007		430	180			219	52
10/6/2007						212	47
10/7/2007							42
10/19/2007			110				
10/26/2007			660				
10/27/2007		500					

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-1, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
10/30/2007				2400			
Total Violations	0	9	13	9	0	22	32

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdRH-2/S9, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
9/1/2007			120				
9/5/2007			110				
9/17/2007		580					
10/25/2007			140				
10/26/2007			620				
10/27/2007		2000		2000			
Total Violations	0	2	4	1	0	0	0

Notes: The Site ID MdRH-2 refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007. The Site ID S9 refers to sites identified in the Monitoring and Reporting Program CI 6948 for Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. Site MdRH-2 and S9 are the same sampling site.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
 AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
 ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
 SITE ID MdrH-3, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
9/17/2007		2600		2700			
Total Violations	0	1	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-5, OXFORD BASIN SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/13/2007	>13000	1900	110	>13000			
9/4/2007	>13000	4200	150	>13000			
9/5/2007					1258	233	
9/6/2007		1300			2261	299	
9/7/2007				6800	2716	382	37
9/8/2007					2716	382	37
9/9/2007					1884	298	
9/10/2007					1884	298	
9/11/2007					1799	247	
9/12/2007					1799	247	
9/13/2007					1356		
9/14/2007					1356		
9/15/2007					1011	219	
9/16/2007					1011	219	
9/19/2007					1011	219	
9/20/2007					1011	219	
9/21/2007					1011	219	
9/22/2007					1011	219	
9/23/2007					1011	219	
9/24/2007					1011	219	
9/25/2007					1011	219	
9/26/2007					1011	219	
9/27/2007					1101	277	
9/28/2007					1101	277	
9/29/2007					1101	277	
9/30/2007					1101	277	
10/1/2007					1101	277	
10/2/2007					1172	219	
10/3/2007					1172	219	
Total Violations	0	3	2	1	28	26	2

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MDRH-6 DEPTH, BASIN E**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
10/10/2007					1149		
10/11/2007					1149		
10/12/2007					1149		
10/13/2007					1149		
10/14/2007					1149		
10/15/2007					1149		
10/16/2007					1124		
10/17/2007					1124		
10/18/2007					1124		
10/19/2007					1124		
10/20/2007					1124		
10/21/2007					1124		
Total Violations	0	0	0	0	12	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MDRH-6 SURFACE, BASIN E**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/9/2007					1932		
8/10/2007					1932		
8/11/2007					1932		
8/12/2007					1932		
8/13/2007	17000				2535		
8/14/2007					2535		
8/15/2007					2877		
8/16/2007					2877		
8/17/2007					2603		
8/18/2007					2603		
8/19/2007					2603		
8/20/2007					2072		
8/21/2007					2072		
8/22/2007					3113		
8/23/2007					3113		
8/24/2007					3113		
8/25/2007					3113		
8/26/2007					3113		
8/27/2007					2864		
8/28/2007					2864		
8/29/2007					2465		
8/30/2007					2465		
8/31/2007					1868		
9/1/2007					1868		
9/2/2007					1825		
9/3/2007					1825		
9/4/2007					1570		
9/5/2007					2305		
9/6/2007					2305		
9/7/2007					2305		
9/8/2007					2305		
9/9/2007					2305		
9/10/2007					1602		
9/11/2007					1602		
10/17/2007					1006		
10/18/2007					1006		
10/19/2007					1006		
10/20/2007					1006		
10/21/2007					1006		
10/22/2007					1948		
10/23/2007					1948		
10/24/2007					1948		
10/25/2007					1948		
10/26/2007					1948		

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-6 SURFACE, BASIN E**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
10/27/2007					1948		
10/28/2007					1948		
10/29/2007					1343		
10/30/2007					1343		
10/31/2007					1139		
Total Violations	1	0	0	0	49	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-7, BOONE-OLIVE PLANT SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/13/2007		500			1209		
8/14/2007					1209		
8/15/2007					1318	206	
8/16/2007					1318	206	
8/17/2007					1318	206	
8/18/2007					1318	206	
8/19/2007					1318	206	
8/22/2007					1318	206	
8/23/2007					1318	206	
8/24/2007					1318	206	
8/25/2007					1318	206	
8/26/2007					1318	206	
8/27/2007		430		3700	1500	226	
8/28/2007					1500	226	
8/29/2007					1281		
8/30/2007					1281		
8/31/2007					1067		
9/1/2007					1067		
9/2/2007					1095		
9/3/2007					1095		
9/5/2007					1044		
9/6/2007					1044		
9/7/2007					1044		
9/8/2007					1044		
9/9/2007					1044		
9/10/2007					1010		
9/11/2007					1010		
10/1/2007				1400			
10/22/2007					1609		
10/23/2007					1609		
10/24/2007					1609		
10/25/2007					1609		
10/26/2007					1609		
10/27/2007					1609		
10/28/2007					1609		
10/29/2007					1186		
10/30/2007					1186		
10/31/2007					1138		
Total Violations	0	2	0	2	37	12	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-9 SURFACE, BASIN F**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/13/2007		470	890				
Total Violations	0	1	1	0	0	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-06, WALNUT CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/24/2006		1800	>2000	2700			
6/5/2007			290				
Total Violations	0	1	2	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-07, PARADISE COVE**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/18/2006							38
9/19/2006							38
9/20/2006							52
9/21/2006							52
9/22/2006							52
9/23/2006							52
9/24/2006							52
9/25/2006							56
9/26/2006							56
9/27/2006							66
9/28/2006							66
9/29/2006							66
9/30/2006							66
10/1/2006							66
10/2/2006							45
10/3/2006							45
10/4/2006							45
10/5/2006							42
10/6/2006							42
10/7/2006							42
10/8/2006							42
10/9/2006							42
10/23/2006			359				48
10/24/2006							48
10/25/2006							46
10/26/2006							46
10/27/2006							46
10/28/2006							46
10/29/2006							46
8/13/2007			341				
8/15/2007	11000		150				48
8/16/2007							48
8/17/2007							37
8/18/2007							37
8/19/2007							37
8/29/2007							38
8/30/2007							38
8/31/2007							38
9/1/2007							38
9/2/2007							38
9/3/2007							38
9/5/2007							38
9/6/2007							38
9/7/2007							38

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-07, PARADISE COVE**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/8/2007							38
9/9/2007							38
10/29/2007		1017	350	1145			
Total Violations	1	1	4	1	0	0	45

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-08, ESCONDIDO CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/17/2006		1000	290	1200			
Total Violations	0	1	1	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-09, LATIGO SHORE DR**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/25/2006			754				
10/23/2006							42
10/24/2006							42
4/30/2007			1430				52
5/1/2007							52
5/2/2007							66
5/3/2007							66
5/4/2007							66
5/5/2007							66
5/6/2007							66
5/7/2007							59
5/8/2007							59
5/9/2007							105
5/10/2007							105
5/11/2007							105
5/12/2007							105
5/13/2007							105
5/14/2007							59
5/15/2007							59
5/16/2007							59
5/17/2007							59
5/18/2007							59
5/19/2007							59
5/20/2007							59
5/21/2007							41
5/22/2007							41
5/23/2007							41
5/24/2007							41
5/25/2007							41
5/26/2007							41
5/27/2007							41
5/28/2007							41
5/29/2007	14136	5504	637	14136			65
10/24/2007			108				
Total Violations	1	1	4	1	0	0	32

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-10, SOLSTICE CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			140	1300			54
9/15/2006							54
9/16/2006							42
9/17/2006							42
9/18/2006							42
9/19/2006							43
9/20/2006							43
9/21/2006							43
9/22/2006							43
9/23/2006							55
9/24/2006							55
9/25/2006							55
9/26/2006		430	140	3000			63
9/27/2006							63
9/28/2006							69
9/29/2006							69
9/30/2006							69
10/1/2006							69
10/2/2006							69
10/3/2006							59
10/4/2006							59
10/5/2006					1229		59
10/6/2006					1229		59
10/7/2006					1229		59
10/8/2006					1229		59
10/9/2006					1229		59
10/10/2006					1260		58
10/11/2006					1260		58
10/12/2006					1094		46
10/13/2006					1094		46
10/14/2006					1063		38
10/15/2006					1063		38
10/16/2006					1387		44
10/17/2006					1435		38
10/18/2006					1435		38
10/19/2006					1387		36
10/20/2006					1387		36
10/21/2006					1387		36
10/22/2006					1387		36
10/23/2006					1387		36
5/1/2007			140				
5/22/2007							38
5/23/2007							38
5/24/2007							49

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-10, SOLSTICE CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
5/25/2007							49
5/26/2007							49
5/27/2007							49
5/28/2007							49
5/29/2007							42
5/30/2007							42
8/7/2007				1400			
8/21/2007			>2000				
9/8/2007							36
9/9/2007							36
9/10/2007							36
9/11/2007							41
9/12/2007							41
9/13/2007							54
9/14/2007							54
9/15/2007							54
9/16/2007							54
9/17/2007							54
9/18/2007							56
9/19/2007							56
9/27/2007							36
9/28/2007							36
9/29/2007							36
9/30/2007							36
10/1/2007							36
10/4/2007							36
10/5/2007							36
10/6/2007							36
10/7/2007							36
10/8/2007							36
Total Violations	0	1	4	3	19	0	71

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-11, PUERCO BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
5/21/2007			399				
Total Violations	0	0	1	0	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Collform	Fecal Collform	Enterococcus	Total Collform (Fecal:Total Collform Ratio > 0.1)	Total Collform	Fecal Collform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			740		6253	201	454
9/15/2006					6253	201	454
9/16/2006					5150		356
9/17/2006					5150		356
9/18/2006					5150		356
9/19/2006			180		4975		336
9/20/2006					4975		336
9/21/2006	13000	910	500		5357		346
9/22/2006					5357		346
9/23/2006	>13000		1300		5357		351
9/24/2006					5357		351
9/25/2006					4975		323
9/26/2006	>13000	2200	>2000	>13000	5357		372
9/27/2006					5357		372
9/28/2006	13000		880		5357		382
9/29/2006					5357		382
9/30/2006			530		5330		390
10/1/2006					5330		390
10/2/2006					5737		433
10/3/2006			110		5016		390
10/4/2006					5016		390
10/5/2006			340		4818		383
10/6/2006					4818		383
10/7/2006					4551		332
10/8/2006					4551		332
10/9/2006					4312		326
10/10/2006			140		4214		305
10/11/2006					4214		305
10/12/2006					4122		276
10/17/2006			360		4630		312
10/18/2006					4630		312
10/19/2006			180		4607		312
10/20/2006					4607		312
10/21/2006					3691		254
10/22/2006					3691		254
10/23/2006					3292		219
10/24/2006	>13000	6300	830	>13000	3691		244
10/25/2006					3691		244
10/26/2006	>13000	740	1300		3691		236
10/27/2006					3691		236
10/28/2006			160	3400	3301		204
10/29/2006					3301		204
10/30/2006					3131		188
10/31/2006			240		3120		191

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
4/30/2007							70
5/1/2007							69
5/2/2007							69
5/3/2007							63
5/4/2007							63
5/5/2007							63
5/6/2007							63
5/7/2007							63
5/8/2007	>13000	1900	590	>13000	1294		111
5/9/2007					1294		111
5/10/2007	13000	3200	1400	13000	4830	406	251
5/11/2007					4830	406	251
5/12/2007			180		4741	283	235
5/13/2007					4741	283	235
5/14/2007					4741	283	235
5/15/2007					3178	223	203
5/16/2007					3178	223	203
5/17/2007					3178	223	203
5/18/2007					3178	223	203
5/19/2007					3178	223	203
5/20/2007					3178	223	203
5/21/2007					3178	223	203
5/22/2007				2700	3105	238	172
5/23/2007					3105	238	172
5/24/2007					2921	238	129
5/25/2007					2921	238	129
5/26/2007					2921	238	129
5/27/2007					2921	238	129
5/28/2007					2921	238	129
5/29/2007			110		2687	220	127
5/30/2007					2687	220	127
5/31/2007		580	620	1300	2662	289	168
6/1/2007					2662	289	168
6/2/2007					2280	245	151
6/3/2007					2280	245	151
6/4/2007					2280	245	151
6/5/2007			240		2373	249	158
6/6/2007					2373	249	158
6/7/2007					1653		105
6/8/2007					1653		105
6/9/2007					1315		79
6/10/2007					1315		79
6/11/2007					1130		71
6/12/2007			160		1297		78

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
6/13/2007					1297		78
6/14/2007					1341		71
6/15/2007					1341		71
6/16/2007					1341		71
6/17/2007					1341		71
6/18/2007					1341		71
6/19/2007	>13000	430	1400		1683		95
6/20/2007					1683		95
6/21/2007					1163		92
6/22/2007					1163		92
6/23/2007					1131		117
6/24/2007					1131		117
6/25/2007					1131		117
6/26/2007							92
6/27/2007							92
6/28/2007							90
6/29/2007							90
6/30/2007							70
7/1/2007							70
7/2/2007							71
7/3/2007			190				81
7/4/2007							81
7/5/2007							54
7/6/2007							54
7/7/2007							69
7/8/2007							69
7/9/2007							69
7/10/2007			120				74
7/11/2007							74
7/12/2007							52
7/13/2007							52
7/14/2007							54
7/15/2007							54
7/16/2007							54
7/17/2007							44
7/18/2007							44
8/7/2007	>13000	2300	2000	>13000			48
8/8/2007							48
8/9/2007			120				48
8/10/2007							48
8/11/2007	>13000		250		1821	210	83
8/12/2007					1821	210	83
8/13/2007					1821	210	83
8/14/2007			120		1955		87

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
8/15/2007					1955		87
8/16/2007					2801		102
8/17/2007					2801		102
8/18/2007					2801		102
8/19/2007					2801		102
8/20/2007					2801		102
8/21/2007					2160		88
8/22/2007					2160		88
8/23/2007					2720		120
8/24/2007					2720		120
8/25/2007					2720		120
8/26/2007					2720		120
8/27/2007					2720		120
8/28/2007					2372		113
8/29/2007					2372		113
8/30/2007					2647		127
8/31/2007					2647		127
9/1/2007					2647		127
9/2/2007					2647		127
9/3/2007					2647		127
9/4/2007			190		2486		133
9/5/2007					2486		133
9/6/2007					1539		88
9/7/2007					1539		88
9/8/2007					1244		85
9/9/2007					1244		85
9/10/2007							71
9/11/2007							59
9/12/2007							59
9/13/2007							52
9/14/2007							52
9/15/2007							58
9/16/2007							58
9/17/2007							58
9/18/2007							52
9/19/2007							52
9/20/2007							58
9/26/2007							58
9/27/2007							55
9/28/2007							55
9/29/2007							55
9/30/2007							55
10/1/2007							55
10/2/2007							58

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/3/2007							58
10/4/2007							43
10/5/2007							43
10/9/2007			500				69
10/10/2007							69
10/11/2007							58
10/17/2007							58
10/18/2007					1204		72
10/19/2007					1204		72
10/20/2007					1204		72
10/21/2007					1204		72
10/22/2007					1204		72
10/23/2007					1204		72
10/24/2007							76
10/25/2007							76
10/26/2007							76
10/27/2007							76
10/28/2007							76
10/29/2007							76
10/30/2007							50
10/31/2007							50
Total Violations	11	9	32	8	129	33	197

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-13, SWEETWATER CANYON**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006							42
9/15/2006							42
9/16/2006							42
9/17/2006							42
9/18/2006							42
9/19/2006			320	1900			59
9/20/2006							59
9/21/2006	11000		>2000				97
9/22/2006							97
9/23/2006							97
9/24/2006							97
9/25/2006							97
9/26/2006							97
9/27/2006			150				103
9/28/2006							107
9/29/2006							107
9/30/2006							80
10/1/2006							80
10/2/2006							80
10/3/2006							63
10/4/2006							63
10/5/2006							80
10/6/2006							80
10/7/2006							80
10/8/2006							80
10/9/2006							80
10/10/2006							80
10/11/2006							63
10/12/2006							56
10/13/2006							56
10/14/2006							57
10/15/2006							57
10/16/2006							57
10/17/2006							46
10/18/2006							46
10/24/2007			180				42
10/25/2007							42
10/26/2007							38
10/27/2007							38
10/28/2007							38

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-13, SWEETWATER CANYON**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/29/2007							38
Total Violations	1	0	4	1	0	0	41

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-18, TOPANGA CANYON**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/7/2006			450				
10/25/2006			220				
4/13/2007			160				
4/24/2007		660	110	5500			
4/25/2007		1100		4900			
7/5/2007	11000	8700	160	11000			
7/20/2007		3000		3000			
7/24/2007		500					
7/31/2007		580					
10/26/2007			150				
Total Violations	1	6	6	4	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 2-01, CASTLEROCK SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			340		6705	204	555
9/15/2006					6705	204	555
9/16/2006			380		6505		470
9/17/2006					6505		470
9/18/2006					6023		416
9/19/2006					6023		416
9/20/2006	>13000	500	2000		6505	217	487
9/21/2006					6505	217	487
9/22/2006	>13000		1700		6927	222	546
9/23/2006					6505	201	479
9/24/2006					6505	201	479
9/25/2006					6229	228	477
9/26/2006	>13000	430	>2000		6705	243	550
9/27/2006					6705	243	550
9/28/2006	>13000	910	>2000		8509	315	810
9/29/2006					8509	315	810
9/30/2006	>13000	660	2000		8843	337	879
10/1/2006					8843	337	879
10/2/2006					8843	337	879
10/3/2006					7316	294	707
10/4/2006					7316	294	707
10/5/2006					6944	304	674
10/6/2006					6944	304	674
10/7/2006					7190	353	701
10/8/2006					7190	353	701
10/9/2006					8773	374	915
10/10/2006			160		7706	337	769
10/11/2006					7706	337	769
10/12/2006	13000		1100		7706	238	724
10/13/2006					7706	238	724
10/14/2006					7753	254	787
10/15/2006					7753	254	787
10/16/2006					7549	300	863
10/17/2006	>13000	1900	>2000	>13000	8019	369	947
10/18/2006					8019	369	947
10/19/2006			250		7107	311	829
10/20/2006					6646	295	752
10/21/2006			220		6611	254	665
10/22/2006					6132	252	599
10/23/2006					6132	252	599
10/24/2006					6132	252	599
10/25/2006					6132	252	599
10/26/2006					5582	235	515
10/27/2006					5582	235	515

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 2-01, CASTLEROCK SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/28/2006	>13000		1400		5582		493
10/29/2006					5582		493
10/30/2006					4947		403
10/31/2006					4947		403
4/10/2007	>13000		>2000				
4/12/2007		660	780				
7/10/2007			110				
7/17/2007			380				
7/19/2007		430	1400	3900			75
7/20/2007							75
7/21/2007							56
7/22/2007							56
7/23/2007							56
7/24/2007							45
7/25/2007							45
7/26/2007							56
7/27/2007							56
7/28/2007							56
7/29/2007							56
7/30/2007							56
7/31/2007		1500		1500			45
8/1/2007							45
8/2/2007							45
8/3/2007							45
8/4/2007							45
8/5/2007							45
8/6/2007							45
8/7/2007							38
8/8/2007							38
9/4/2007	>13000		590				
9/11/2007		580					
Total Violations	10	9	19	3	48	40	69

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB 2-07, SANTA MONICA CANYON SD

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/15/2006			250				
8/28/2007			150				
9/8/2007				2700			
9/26/2007		430					
9/29/2007			110				
10/2/2007			190				
10/4/2007			150				
10/11/2007			110				
10/25/2007			110				
10/26/2007			250				
Total Violations	0	1	8	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 4-01, NICHOLAS CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/2/2006		1178		1178			
Total Violations	0	1	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 5-02, 28th STREET SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Collform	Fecal Collform	Enterococcus	Total Collform (Fecal:Total Collform > 0.1)	Total Collform	Fecal Collform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			590				
9/20/2006			140				
9/26/2006		830	1700	2000			40
9/27/2006							40
9/28/2006							40
9/29/2006							40
9/30/2006							43
10/1/2006							46
10/2/2006							43
10/3/2006							40
10/4/2006							38
10/5/2006							38
10/7/2006							37
10/17/2006	>13000	5500	>2000	>13000			
10/18/2006	>13000						
4/19/2007	>13000	9600	>2000	>13000			
4/26/2007	>13000	660	270				
4/30/2007	>24192	2987	3255	>24192			
8/22/2007		1100	740	1100			
9/7/2007			>2000				
9/26/2007	>13000	830	940				
Total Violations	6	7	10	5	0	0	11

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB 5-03, MANHATTAN BEACH PIER SD

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
7/30/2007				1036			
Total Violations	0	0	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 6-01, HERONDO SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/31/2006			140				
6/4/2007			146				
10/25/2007		1700	1400	2700			
10/26/2007		1800	480	2600			
Total Violations	0	2	4	2	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB 6-05, AVENUE I SD

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/30/2006		601					
6/25/2007	24912						
8/13/2007				1240			
Total Violations	1	1	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 7-7, WHITE POINT COUNTY BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
4/2/2007			110				
7/30/2007			360				
8/1/2007			140				
10/1/2007			230				
10/17/2007							40
10/18/2007							40
10/19/2007							40
10/20/2007							40
10/21/2007							40
Total Violations	0	0	4	0	0	0	5

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006					1452		
9/15/2006					1225		
9/16/2006					1176		
9/17/2006					1186		
9/18/2006					1180		
9/19/2006					1137		
9/20/2006					1020		
4/24/2007	>13000	4400	190	>13000			
6/15/2007				1900			
6/22/2007	11000						
6/28/2007	11000						
6/30/2007			140		1092		
7/1/2007					1096		
7/2/2007					1191		
7/3/2007					1315		
7/4/2007					1259		
7/5/2007					1423		
7/6/2007					1516		
7/7/2007					1587		
7/8/2007					1512		
7/9/2007					1536		
7/10/2007					1505		
7/11/2007					1307		
7/12/2007					1513		
7/13/2007	13000				1755		
7/14/2007					1817		
7/15/2007					1813		
7/16/2007					1814		
7/17/2007	>13000				1992		
7/18/2007	>13000				2170		
7/19/2007	>13000				2675		
7/20/2007					2161		
7/21/2007	>13000				2746		
7/22/2007					2570		
7/23/2007					2531		
7/24/2007					2599		
7/25/2007					2427		
7/26/2007	13000				2612		
7/27/2007	>13000				2910		
7/28/2007					2650		
7/29/2007					2602		
7/30/2007					2563		
7/31/2007					2482		
8/1/2007	13000				2676		

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
8/2/2007	>13000				2713		
8/3/2007	>13000	500			3146		
8/4/2007	>13000				3535		
8/5/2007					3427		
8/6/2007					3255		
8/7/2007	13000				3477		
8/8/2007	13000				3691		
8/9/2007					4001		
8/10/2007	>13000				5084		
8/11/2007					5039		
8/12/2007					4817		
8/13/2007					5553		
8/14/2007	11000	1300		11000	5737		
8/15/2007	>13000	6800		>13000	5955		
8/16/2007	>13000	11000		>13000	5955		
8/17/2007	11000	5500		11000	5909	235	
8/18/2007	>13000	13000		>13000	5909	299	
8/19/2007					7315	321	
8/20/2007					7107	336	
8/21/2007					6983	337	
8/22/2007			590		6837	329	
8/23/2007	>13000	1100			7183	374	
8/24/2007	13000				8273	403	
8/25/2007					7647	391	
8/26/2007					7456	426	
8/27/2007					8106	467	
8/28/2007					7618	426	
8/29/2007					6888	391	
8/30/2007					7316	403	
8/31/2007	>13000	1300			7316	461	
9/1/2007		830			7216	502	
9/2/2007					7017	502	
9/3/2007					6803	524	
9/4/2007		500			6852	523	
9/5/2007					6958	491	
9/6/2007	13000	500			6958	499	
9/7/2007					6041	468	
9/8/2007					5723	454	
9/9/2007					5504	460	
9/10/2007					5894	506	
9/11/2007					5679	460	
9/12/2007	>13000	430			5897	458	
9/13/2007	>13000	1800		>13000	5942	465	
9/14/2007	>13000	830			5942	423	

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/15/2007					5598	335	
9/16/2007					5421	293	
9/17/2007					5189	243	
9/18/2007					5220	241	
9/19/2007					4822	227	
9/20/2007					3967	211	
9/21/2007					3948	211	
9/22/2007					3719		
9/23/2007					3482		
9/24/2007					3563		
9/25/2007					3543		
9/26/2007	13000				3781		
9/27/2007					3722		
9/28/2007			140		3879		
9/29/2007			150		3785		
9/30/2007					3547		
10/1/2007					3356		
10/2/2007					3036		
10/3/2007					2753		
10/4/2007					2594		
10/5/2007					2143		
10/6/2007					1821		
10/7/2007					1934		
10/8/2007					1941		
10/9/2007					1753		
10/10/2007					1577		
10/11/2007					1355		
10/12/2007					1203		
10/13/2007					1054		
10/23/2007			110				
10/25/2007			320				
Total Violations	30	15	7	8	113	36	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB MC-01, MALIBU COLONY DR**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006					2235	222	123
9/15/2006					1442		90
9/16/2006					1442		90
9/17/2006					1442		90
9/18/2006							70
9/19/2006							70
9/20/2006							46
9/21/2006							46
9/22/2006							52
9/23/2006							52
9/24/2006							52
9/25/2006							42
9/26/2006							42
6/4/2007		419					
Total Violations	0	1	0	0	4	1	13

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-MC-02, MALIBU CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006		1100		6800	1390	242	
9/15/2006		1100		7900	1629	276	
9/16/2006					1827	276	
9/17/2006					2155	297	
9/18/2006					2587	321	
9/19/2006					2341	297	
9/20/2006					2512	300	
9/21/2006					2114	280	
9/22/2006					1904	262	
9/23/2006					1526	236	
9/24/2006					1378		
9/25/2006					1232		
9/26/2006					1132		
9/27/2006					1248		
9/28/2006		500			1414		
9/29/2006		430		2200	1443		
9/30/2006				1400	1304		
10/1/2006					1169		
10/2/2006					1036		
10/3/2006	>13000	6300		>13000	1169		
10/4/2006					1058		
10/5/2006	13000	7300	1400	13000	1128	222	
10/6/2006						216	
10/7/2006		740				241	
10/8/2006						248	
10/9/2006					1006	265	
10/10/2006		1000	530	5500	1091	282	
10/11/2006					1053	272	
10/12/2006					1058	252	
10/13/2006						246	
10/14/2006						228	
10/15/2006						210	
10/16/2006						224	
10/17/2006		1300		6300		246	
10/18/2006			110	1100		238	
10/19/2006						238	
10/20/2006		500				263	
10/21/2006						263	
10/22/2006						283	
10/23/2006					1155	307	38
10/24/2006						283	
10/25/2006		3200	160	3200	1054	319	38
10/26/2006						319	39
10/27/2006		430	110	3400		326	42

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-MC-02, MALIBU CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/28/2006						317	43
10/29/2006						312	47
10/30/2006						314	51
10/31/2006						289	47
4/6/2007		580		3400			
4/7/2007	>13000	1600		>13000			
4/24/2007	11000	740					
4/25/2007	11000	7300		11000			
4/27/2007		430		1600			
5/18/2007		430	190				
5/19/2007		430					
6/2/2007			270				
6/16/2007		8700	310	9600			
10/19/2007		500		1300			
10/20/2007	>13000	830					
10/24/2007	11000	500					
10/30/2007		580	120				
10/31/2007		910		5900			
Total Violations	7	25	9	18	28	37	8

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB MC-03, MALIBU PIER**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/10/2006			422				
10/11/2006							40
10/12/2006							40
10/13/2006							40
10/14/2006							40
10/15/2006							40
10/16/2006							40
10/17/2006							40
10/23/2006							42
10/24/2006							42
10/25/2006							68
10/26/2006							68
10/27/2006							68
10/28/2006							68
10/29/2006							68
10/30/2006							42
10/31/2006							42
6/4/2007			131				
10/29/2007			109	2046			
Total Violations	0	0	3	1	0	0	16

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

EXHIBIT B

***Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice***



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Donald L. Wolfe, Director
County of Los Angeles
Flood Control District
P.O. Box 1460
Alhambra, CA 91802-1460

VIA CERTIFIED MAIL

NOTICE OF VIOLATION (ORDER NO. 01-182 AS AMENDED BY ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, W DID 4B190107101)

Dear Mr. Wolfe:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the Los Angeles County Flood Control District is a Permittee.

BACKGROUND

The LA MS4 Permit includes Discharge Prohibitions, Receiving Water Limitations, and a Monitoring and Reporting Program, among other requirements. Under Part 1, Discharge Prohibitions, the LA MS4 Permit requires that the Permittees "effectively prohibit non-storm water discharges into the MS4 [municipal separate storm sewer system] and watercourses," except under limited circumstances, as specified in Part 1. Under Part 2, Receiving Water Limitations, the LA MS4 Permit prohibits "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives."

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the MS4 that cause or contribute to exceedances of the bacteria RWLs.

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The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay and Marina del Rey Harbor, navigable waters of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline and harbor water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay and within Marina del Rey Harbor. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

VIOLATIONS OF RECEIVING WATER LIMITATIONS

The Los Angeles County Flood Control District is hereby notified that technical staff has concluded that the Flood Control District is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline and harbor monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Parts 2.5 and 2.6 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at 29 shoreline and harbor monitoring sites located along Santa Monica Bay beaches and within Marina del Rey Harbor to which the Los Angeles County Flood Control District discharges via the MS4, on 923 days, which included 1,603 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are summarized in Table 1, detailed in the attachments, and incorporated herein by reference. The Los Angeles County Flood Control District is jointly responsible for violations at these monitoring sites along with the other Permittees with land area within the watersheds draining to these sites.

CIVIL LIABILITY

Pursuant to CWC § 13385, the Los Angeles County Flood Control District is subject to penalties of up to \$10,000 for each day in which a violation of RWLs occurs. These civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The Los Angeles County Flood Control District may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above.

To ensure that the causes of the violations are identified and abated, enclosed herewith, please find an Order directing the Los Angeles County Flood Control District to submit a variety of

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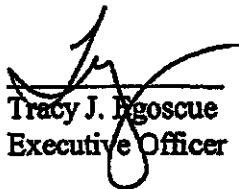


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reports pursuant to CWC § 13383. Specifically, these reports shall provide an evaluation and documentation of the causes of these violations, remedial actions to date, and the Flood Control District's plans for additional corrective and preventative actions to bring discharges from the MS4 into prompt compliance with the bacteria RWLs applicable to the Santa Monica Bay and Marina del Rey Harbor.

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosures: Table 1
Attachments 1-18, 21, 34-43
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Mr. Mark Pestrella, Assistant Deputy Director, Los Angeles County Public Works
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

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TABLE 1

LOS ANGELES COUNTY
SUMMARY OF VIOLATIONS OF BACTERIA
RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042

Site ID	Single Sample RWL Violations				30-day Geometric Mean RWL Violations			Total RWL Violations by Site	Total Days of Violations by Site
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus		
MdRH-1	0	9	13	9	0	22	32	85	42
MdRH-2	0	2	4	1	0	0	0	7	6
MdRH-3	0	1	0	1	0	0	0	2	1
MdRH-5	0	3	2	1	28	26	2	62	29
MdRH-6 (D)	0	0	0	0	12	0	0	12	12
MdRH-6 (S)	1	0	0	0	49	0	0	50	49
MdRH-7	0	2	0	2	37	12	0	53	38
MdRH-9 (S)	0	1	1	0	0	0	0	2	1
SMB 1-06	0	1	2	1	0	0	0	4	2
SMB 1-07	1	1	4	1	0	0	45	52	47
SMB 1-08	0	1	1	1	0	0	0	3	1
SMB 1-09	1	1	4	1	0	0	32	39	34
SMB 1-10	0	1	4	3	19	0	71	98	74
SMB 1-11	0	0	1	0	0	0	0	1	1
SMB 1-12	11	9	32	8	129	33	197	419	197
SMB 1-13	1	0	4	1	0	0	41	47	41
SMB 1-18	1	6	6	4	0	0	0	17	10
SMB 2-01	10	9	19	3	48	40	69	198	75
SMB 2-07	0	1	8	1	0	0	0	10	10
SMB 4-01	0	1	0	1	0	0	0	2	1
SMB 5-02	6	7	10	5	0	0	11	39	21
SMB 5-03	0	0	0	1	0	0	0	1	1
SMB 6-01	0	2	4	2	0	0	0	8	4
SMB 6-05	1	1	0	1	0	0	0	3	3
SMB 7-07	0	0	4	0	0	0	5	9	9
SMB BC-01	30	15	7	8	113	36	0	209	119
SMB MC-01	0	1	0	0	4	1	13	19	14
SMB MC-02	7	25	9	18	28	37	8	132	62
SMB MC-03	0	0	3	1	0	0	16	20	19
Totals	70	100	142	75	467	207	542	1603	923

ATTACHMENTS

**VIOLATIONS OF BACTERIA RECEIVING WATER LIMITATIONS BY
SHORELINE AND HARBOR MONITORING SITES**

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-1, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Colliform	Fecal Colliform	Enterococcus	Total Colliform (Fecal:Total Colliform Ratio > 0.1)	Total Colliform	Fecal Colliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/15/2007				1100			
8/22/2007			190				
8/25/2007			360				
9/1/2007		3400	830	4200			
9/4/2007		740		1700			
9/5/2007			500	1200			
9/6/2007			410	1500			36
9/7/2007		1500	410	3000			42
9/8/2007		4200	1700	5900			52
9/9/2007							55
9/10/2007							55
9/11/2007			140				57
9/12/2007		1700		1700			61
9/13/2007							58
9/14/2007		430	110				58
9/15/2007			290			204	67
9/16/2007						214	72
9/17/2007						224	72
9/18/2007						214	68
9/19/2007						214	66
9/20/2007						214	66
9/21/2007						214	64
9/22/2007						225	69
9/23/2007						238	70
9/24/2007						233	64
9/25/2007						233	64
9/26/2007						233	64
9/27/2007						226	64
9/28/2007						239	68
9/29/2007						246	71
9/30/2007						263	71
10/1/2007						216	59
10/2/2007		430				223	56
10/3/2007						228	55
10/4/2007						215	54
10/5/2007		430	180			219	52
10/6/2007						212	47
10/7/2007							42
10/19/2007			110				
10/26/2007			660				
10/27/2007		500					

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MDRH-1, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
10/30/2007				2400			
Total Violations	0	9	13	9	0	22	32

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrRH-2/S9, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
9/1/2007			120				
9/5/2007			110				
9/17/2007		580					
10/25/2007			140				
10/26/2007			620				
10/27/2007		2000		2000			
Total Violations	0	2	4	1	0	0	0

Notes: The Site ID MdrRH-2 refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007. The Site ID S9 refers to sites identified in the Monitoring and Reporting Program CI 6948 for Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. Site MdrRH-2 and S9 are the same sampling site.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-3, MOTHERS' BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
9/17/2007		2600		2700			
Total Violations	0	1	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MDRH-5, OXFORD BASIN SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/13/2007	>13000	1900	110	>13000			
9/4/2007	>13000	4200	150	>13000	1258	233	
9/5/2007					2261	299	
9/6/2007		1300		6800	2716	382	37
9/7/2007					2716	382	37
9/8/2007					1884	298	
9/9/2007					1884	298	
9/10/2007					1799	247	
9/11/2007					1799	247	
9/12/2007					1356		
9/13/2007					1356		
9/14/2007					1011	219	
9/15/2007					1011	219	
9/16/2007					1011	219	
9/19/2007					1011	219	
9/20/2007					1011	219	
9/21/2007					1011	219	
9/22/2007					1011	219	
9/23/2007					1011	219	
9/24/2007					1011	219	
9/25/2007					1011	219	
9/26/2007					1101	277	
9/27/2007					1101	277	
9/28/2007					1101	277	
9/29/2007					1101	277	
9/30/2007					1101	277	
10/1/2007					1172	219	
10/2/2007					1172	219	
10/3/2007					1172	219	
Total Violations	0	3	2	1	28	26	2

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-6 DEPTH, BASIN E**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
10/10/2007					1149		
10/11/2007					1149		
10/12/2007					1149		
10/13/2007					1149		
10/14/2007					1149		
10/15/2007					1149		
10/16/2007					1149		
10/17/2007					1124		
10/18/2007					1124		
10/19/2007					1124		
10/20/2007					1124		
10/21/2007					1124		
Total Violations	0	0	0	0	12	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MDRH-6 SURFACE, BASIN E**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/9/2007					1932		
8/10/2007					1932		
8/11/2007					1932		
8/12/2007					1932		
8/13/2007	17000				2535		
8/14/2007					2535		
8/15/2007					2877		
8/16/2007					2877		
8/17/2007					2603		
8/18/2007					2603		
8/19/2007					2603		
8/20/2007					2072		
8/21/2007					2072		
8/22/2007					3113		
8/23/2007					3113		
8/24/2007					3113		
8/25/2007					3113		
8/26/2007					2864		
8/27/2007					2864		
8/28/2007					2465		
8/29/2007					2465		
8/30/2007					1868		
8/31/2007					1868		
9/1/2007					1825		
9/2/2007					1825		
9/3/2007					1570		
9/4/2007					2305		
9/5/2007					2305		
9/6/2007					2305		
9/7/2007					2305		
9/8/2007					2305		
9/9/2007					1602		
9/10/2007					1602		
9/11/2007					1006		
10/17/2007					1006		
10/18/2007					1006		
10/19/2007					1006		
10/20/2007					1006		
10/21/2007					1006		
10/22/2007					1948		
10/23/2007					1948		
10/24/2007					1948		
10/25/2007					1948		
10/26/2007					1948		

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
 AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
 ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
 SITE ID MdrH-6 SURFACE, BASIN E**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
10/27/2007					1948		
10/28/2007					1948		
10/29/2007					1343		
10/30/2007					1343		
10/31/2007					1139		
Total Violations	1	0	0	0	49	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-7, BOONE-OLIVE PLANT SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/13/2007		500			1209		
8/14/2007					1209		
8/15/2007					1318	206	
8/16/2007					1318	206	
8/17/2007					1318	206	
8/18/2007					1318	206	
8/19/2007					1318	206	
8/22/2007					1318	206	
8/23/2007					1318	206	
8/24/2007					1318	206	
8/25/2007					1318	206	
8/26/2007					1318	206	
8/27/2007		430		3700	1500	226	
8/28/2007					1500	226	
8/29/2007					1281		
8/30/2007					1281		
8/31/2007					1067		
9/1/2007					1067		
9/2/2007					1095		
9/3/2007					1095		
9/5/2007					1044		
9/6/2007					1044		
9/7/2007					1044		
9/8/2007					1044		
9/9/2007					1044		
9/10/2007					1010		
9/11/2007					1010		
10/1/2007				1400			
10/22/2007					1609		
10/23/2007					1609		
10/24/2007					1609		
10/25/2007					1609		
10/26/2007					1609		
10/27/2007					1609		
10/28/2007					1609		
10/29/2007					1186		
10/30/2007					1186		
10/31/2007					1138		
Total Violations	0	2	0	2	37	12	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIOD
AUGUST 9, 2007 THROUGH OCTOBER 31, 2007
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042
SITE ID MdrH-9 SURFACE, BASIN F**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limits	10000	400	104	1000	1000	200	35
8/13/2007		470	890				
Total Violations	0	1	1	0	0	0	0

Notes: Site ID refers to sites identified in the "Marina del Rey Harbor Mothers' Beach and Back Basins Bacterial TMDL Coordinated Monitoring Plan," dated June 25, 2007.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-06, WALNUT CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/24/2006		1800	>2000	2700			
6/5/2007			290				
Total Violations	0	1	2	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-07, PARADISE COVE**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/18/2006							38
9/19/2006							38
9/20/2006							52
9/21/2006							52
9/22/2006							52
9/23/2006							52
9/24/2006							52
9/25/2006							56
9/26/2006							56
9/27/2006							66
9/28/2006							66
9/29/2006							66
9/30/2006							66
10/1/2006							66
10/2/2006							45
10/3/2006							45
10/4/2006							45
10/5/2006							42
10/6/2006							42
10/7/2006							42
10/8/2006							42
10/9/2006							42
10/23/2006			359				42
10/24/2006							48
10/25/2006							48
10/26/2006							46
10/27/2006							46
10/28/2006							46
10/29/2006							46
8/13/2007			341				46
8/15/2007	11000		150				48
8/16/2007							48
8/17/2007							37
8/18/2007							37
8/19/2007							37
8/29/2007							38
8/30/2007							38
8/31/2007							38
9/1/2007							38
9/2/2007							38
9/3/2007							38
9/5/2007							38
9/6/2007							38
9/7/2007							38

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-07, PARADISE COVE**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/8/2007							38
9/9/2007							38
10/29/2007		1017	350	1145			
Total Violations	1	1	4	1	0	0	45

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-08, ESCONDIDO CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Colliform	Fecal Colliform	Enterococcus	Total Colliform (Fecal:Total Colliform Ratio > 0.1)	Total Colliform	Fecal Colliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/17/2006		1000	290	1200			
Total Violations	0	1	1	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-09, LATIGO SHORE DR**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/25/2006			754				
10/23/2006							42
10/24/2006							42
4/30/2007			1430				52
5/1/2007							52
5/2/2007							66
5/3/2007							66
5/4/2007							66
5/5/2007							66
5/6/2007							66
5/7/2007							59
5/8/2007							59
5/9/2007							105
5/10/2007							105
5/11/2007							105
5/12/2007							105
5/13/2007							105
5/14/2007							59
5/15/2007							59
5/16/2007							59
5/17/2007							59
5/18/2007							59
5/19/2007							59
5/20/2007							59
5/21/2007							41
5/22/2007							41
5/23/2007							41
5/24/2007							41
5/25/2007							41
5/26/2007							41
5/27/2007							41
5/28/2007							41
5/29/2007	14136	5504	637	14136			65
10/24/2007			108				
Total Violations	1	1	4	1	0	0	32

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-10, SOLSTICE CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Colliform	Fecal Colliform	Enterococcus	Total Colliform (Fecal:Total Colliform Ratio > 0.1)	Total Colliform	Fecal Colliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			140	1300			54
9/15/2006							54
9/16/2006							42
9/17/2006							42
9/18/2006							42
9/19/2006							43
9/20/2006							43
9/21/2006							43
9/22/2006							43
9/23/2006							55
9/24/2006							55
9/25/2006							55
9/26/2006		430	140	3000			63
9/27/2006							63
9/28/2006							69
9/29/2006							69
9/30/2006							69
10/1/2006							69
10/2/2006							69
10/3/2006							59
10/4/2006							59
10/5/2006					1229		59
10/6/2006					1229		59
10/7/2006					1229		59
10/8/2006					1229		59
10/9/2006					1229		59
10/10/2006					1260		58
10/11/2006					1260		58
10/12/2006					1094		46
10/13/2006					1094		46
10/14/2006					1063		38
10/15/2006					1063		38
10/16/2006					1387		44
10/17/2006					1435		38
10/18/2006					1435		38
10/19/2006					1387		36
10/20/2006					1387		36
10/21/2006					1387		36
10/22/2006					1387		36
10/23/2006					1387		36
5/1/2007			140				
5/22/2007							38
5/23/2007							38
5/24/2007							49

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-10, SOLSTICE CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
5/25/2007							49
5/26/2007							49
5/27/2007							49
5/28/2007							49
5/29/2007							42
5/30/2007							42
8/7/2007				1400			
8/21/2007			>2000				
9/8/2007							36
9/9/2007							36
9/10/2007							36
9/11/2007							41
9/12/2007							41
9/13/2007							54
9/14/2007							54
9/15/2007							54
9/16/2007							54
9/17/2007							54
9/18/2007							56
9/19/2007							56
9/27/2007							36
9/28/2007							36
9/29/2007							36
9/30/2007							36
10/1/2007							36
10/4/2007							36
10/5/2007							36
10/6/2007							36
10/7/2007							36
10/8/2007							36
Total Violations	0	1	4	3	19	0	71

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-11, PUERCO BEACH**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
5/21/2007			399				
Total Violations	0	0	1	0	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			740		6253	201	454
9/15/2006					6253	201	454
9/16/2006					5150		356
9/17/2006					5150		356
9/18/2006					5150		356
9/19/2006			180		4975		336
9/20/2006					4975		336
9/21/2006	13000	910	500		5357		346
9/22/2006					5357		346
9/23/2006	>13000		1300		5357		351
9/24/2006					5357		351
9/25/2006					4975		323
9/26/2006	>13000	2200	>2000	>13000	5357		372
9/27/2006					5357		372
9/28/2006	13000		880		5357		382
9/29/2006					5357		382
9/30/2006			530		5330		390
10/1/2006					5330		390
10/2/2006					5737		433
10/3/2006			110		5016		390
10/4/2006					5016		390
10/5/2006			340		4818		383
10/6/2006					4818		383
10/7/2006					4551		332
10/8/2006					4551		332
10/9/2006					4312		326
10/10/2006			140		4214		305
10/11/2006					4214		305
10/12/2006					4122		276
10/17/2006			360		4630		312
10/18/2006					4630		312
10/19/2006			180		4607		312
10/20/2006					4607		312
10/21/2006					3691		254
10/22/2006					3691		254
10/23/2006					3292		219
10/24/2006	>13000	6300	830	>13000	3691		244
10/25/2006					3691		244
10/26/2006	>13000	740	1300		3691		236
10/27/2006					3691		236
10/28/2006			160	3400	3301		204
10/29/2006					3301		204
10/30/2006					3131		188
10/31/2006			240		3120		191

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
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 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
4/30/2007							70
5/1/2007							69
5/2/2007							69
5/3/2007							63
5/4/2007							63
5/5/2007							63
5/6/2007							63
5/7/2007							63
5/8/2007	>13000	1900	590	>13000	1294		111
5/9/2007					1294		111
5/10/2007	13000	3200	1400	13000	4830	406	251
5/11/2007					4830	406	251
5/12/2007			180		4741	283	235
5/13/2007					4741	283	235
5/14/2007					4741	283	235
5/15/2007					3178	223	203
5/16/2007					3178	223	203
5/17/2007					3178	223	203
5/18/2007					3178	223	203
5/19/2007					3178	223	203
5/20/2007					3178	223	203
5/21/2007					3178	223	203
5/22/2007					3178	223	203
5/23/2007				2700	3105	238	172
5/24/2007					3105	238	172
5/25/2007					2921	238	129
5/26/2007					2921	238	129
5/27/2007					2921	238	129
5/28/2007					2921	238	129
5/29/2007			110		2687	220	127
5/30/2007					2687	220	127
5/31/2007		580	620	1300	2662	289	168
6/1/2007					2662	289	168
6/2/2007					2280	245	151
6/3/2007					2280	245	151
6/4/2007					2280	245	151
6/5/2007			240		2373	249	158
6/6/2007					2373	249	158
6/7/2007					1653		105
6/8/2007					1653		105
6/9/2007					1315		79
6/10/2007					1315		79
6/11/2007					1130		71
6/12/2007			160		1297		78

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
6/13/2007					1297		78
6/14/2007					1341		71
6/15/2007					1341		71
6/16/2007					1341		71
6/17/2007					1341		71
6/18/2007					1683		95
6/19/2007	>13000	430	1400		1683		95
6/20/2007					1163		92
6/21/2007					1163		92
6/22/2007					1131		117
6/23/2007					1131		117
6/24/2007					1131		117
6/25/2007							92
6/26/2007							92
6/27/2007							90
6/28/2007							90
6/29/2007							70
6/30/2007							70
7/1/2007							71
7/2/2007							81
7/3/2007			190				81
7/4/2007							54
7/5/2007							54
7/6/2007							69
7/7/2007							69
7/8/2007							69
7/9/2007							74
7/10/2007			120				74
7/11/2007							52
7/12/2007							52
7/13/2007							54
7/14/2007							54
7/15/2007							54
7/16/2007							44
7/17/2007							44
7/18/2007							48
8/7/2007	>13000	2300	2000	>13000			48
8/8/2007							48
8/9/2007			120				48
8/10/2007							83
8/11/2007	>13000		250		1821	210	83
8/12/2007					1821	210	83
8/13/2007					1821	210	83
8/14/2007			120		1955		87

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
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 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
8/15/2007					1955		87
8/16/2007					2801		102
8/17/2007					2801		102
8/18/2007					2801		102
8/19/2007					2801		102
8/20/2007					2801		102
8/21/2007					2801		102
8/22/2007					2160		88
8/23/2007					2160		88
8/24/2007					2720		120
8/25/2007					2720		120
8/26/2007					2720		120
8/27/2007					2720		120
8/28/2007					2720		120
8/29/2007					2372		113
8/30/2007					2372		113
8/31/2007					2647		127
9/1/2007					2647		127
9/2/2007					2647		127
9/3/2007					2647		127
9/4/2007					2647		127
9/5/2007			190		2486		133
9/6/2007					2486		133
9/7/2007					1539		88
9/8/2007					1539		88
9/9/2007					1244		85
9/10/2007					1244		85
9/11/2007							71
9/12/2007							59
9/13/2007							59
9/14/2007							52
9/15/2007							52
9/16/2007							58
9/17/2007							58
9/18/2007							58
9/19/2007							52
9/20/2007							52
9/26/2007							58
9/27/2007							58
9/28/2007							55
9/29/2007							55
9/30/2007							55
10/1/2007							55
10/2/2007							58

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
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 SITE ID SMB 1-12, MARIE CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Collform	Fecal Collform	Enterococcus	Total Collform (Fecal:Total Collform Ratio > 0.1)	Total Collform	Fecal Collform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/3/2007							58
10/4/2007							43
10/5/2007							43
10/9/2007			500				69
10/10/2007							69
10/11/2007							58
10/17/2007							58
10/18/2007					1204		72
10/19/2007					1204		72
10/20/2007					1204		72
10/21/2007					1204		72
10/22/2007					1204		72
10/23/2007					1204		72
10/24/2007							76
10/25/2007							76
10/26/2007							76
10/27/2007							76
10/28/2007							76
10/29/2007							76
10/30/2007							50
10/31/2007							50
Total Violations	11	9	32	8	129	33	197

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-13, SWEETWATER CANYON**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006							42
9/15/2006							42
9/16/2006							42
9/17/2006							42
9/18/2006							42
9/19/2006			320	1900			59
9/20/2006							59
9/21/2006	11000		>2000				97
9/22/2006							97
9/23/2006							97
9/24/2006							97
9/25/2006							97
9/26/2006							97
9/27/2006			150				103
9/28/2006							107
9/29/2006							107
9/30/2006							80
10/1/2006							80
10/2/2006							80
10/3/2006							63
10/4/2006							63
10/5/2006							80
10/6/2006							80
10/7/2006							80
10/8/2006							80
10/9/2006							80
10/10/2006							80
10/11/2006							63
10/12/2006							56
10/13/2006							56
10/14/2006							57
10/15/2006							57
10/16/2006							57
10/17/2006							46
10/18/2006							46
10/24/2007			180				42
10/25/2007							42
10/26/2007							38
10/27/2007							38
10/28/2007							38

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-13, SWEETWATER CANYON**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/29/2007							38
Total Violations	1	0	4	1	0	0	41

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 1-18, TOPANGA CANYON**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/7/2006			450				
10/25/2006			220				
4/13/2007			160				
4/24/2007		660	110	5500			
4/25/2007		1100		4900			
7/5/2007	11000	8700	160	11000			
7/20/2007		3000		3000			
7/24/2007		500					
7/31/2007		580					
10/26/2007			150				
Total Violations	1	6	6	4	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 2-01, CASTLEROCK SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			340		6705	204	555
9/15/2006					6705	204	555
9/16/2006			380		6505		470
9/17/2006					6505		470
9/18/2006					6023		416
9/19/2006					6023		416
9/20/2006	>13000	500	2000		6505	217	487
9/21/2006					6505	217	487
9/22/2006	>13000		1700		6927	222	546
9/23/2006					6505	201	479
9/24/2006					6505	201	479
9/25/2006					6229	228	477
9/26/2006	>13000	430	>2000		6705	243	550
9/27/2006					6705	243	550
9/28/2006	>13000	910	>2000		8509	315	810
9/29/2006					8509	315	810
9/30/2006	>13000	660	2000		8843	337	879
10/1/2006					8843	337	879
10/2/2006					8843	337	879
10/3/2006					7316	294	707
10/4/2006					7316	294	707
10/5/2006					6944	304	674
10/6/2006					6944	304	674
10/7/2006					7190	353	701
10/8/2006					7190	353	701
10/9/2006					8773	374	915
10/10/2006			160		7706	337	769
10/11/2006					7706	337	769
10/12/2006	13000		1100		7706	238	724
10/13/2006					7706	238	724
10/14/2006					7753	254	787
10/15/2006					7753	254	787
10/16/2006					7549	300	863
10/17/2006	>13000	1900	>2000	>13000	8019	369	947
10/18/2006					8019	369	947
10/19/2006			250		7107	311	829
10/20/2006					6646	295	752
10/21/2006			220		6611	254	665
10/22/2006					6132	252	599
10/23/2006					6132	252	599
10/24/2006					6132	252	599
10/25/2006					6132	252	599
10/26/2006					5582	235	515
10/27/2006					5582	235	515

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 2-01, CASTLEROCK SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/28/2006	>13000		1400		5582		493
10/29/2006					5582		493
10/30/2006					4947		403
10/31/2006					4947		403
4/10/2007	>13000		>2000				
4/12/2007		660	780				
7/10/2007			110				
7/17/2007			380				
7/19/2007		430	1400	3900			75
7/20/2007							75
7/21/2007							56
7/22/2007							56
7/23/2007							56
7/24/2007							45
7/25/2007							45
7/26/2007							56
7/27/2007							56
7/28/2007							56
7/29/2007							56
7/30/2007							56
7/31/2007		1500		1500			45
8/1/2007							45
8/2/2007							45
8/3/2007							45
8/4/2007							45
8/5/2007							45
8/6/2007							45
8/7/2007							38
8/8/2007							38
9/4/2007	>13000		590				
9/11/2007		580					
Total Violations	10	9	19	3	48	40	69

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 2-07, SANTA MONICA CANYON SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/15/2006			250				
8/28/2007			150				
9/8/2007				2700			
9/26/2007		430					
9/29/2007			110				
10/2/2007			190				
10/4/2007			150				
10/11/2007			110				
10/25/2007			110				
10/26/2007			250				
Total Violations	0	1	8	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 4-01, NICHOLAS CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/2/2006		1178		1178			
Total Violations	0	1	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 5-02, 28th STREET SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006			590				
9/20/2006			140				
9/26/2006		830	1700	2000			40
9/27/2006							40
9/28/2006							40
9/29/2006							40
9/30/2006							43
10/1/2006							46
10/2/2006							43
10/3/2006							40
10/4/2006							38
10/5/2006							38
10/7/2006							37
10/17/2006	>13000	5500	>2000	>13000			
10/18/2006	>13000						
4/19/2007	>13000	9600	>2000	>13000			
4/26/2007	>13000	660	270				
4/30/2007	>24192	2987	3255	>24192			
8/22/2007		1100	740	1100			
9/7/2007			>2000				
9/26/2007	>13000	830	940				
Total Violations	6	7	10	5	0	0	11

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB 5-03, MANHATTAN BEACH PIER SD

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Collform	Fecal Collform	Enterococcus	Total Collform (Fecal:Total Collform Ratio > 0.1)	Total Collform	Fecal Collform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
7/30/2007				1036			
Total Violations	0	0	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 6-01, HERONDO SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin/Plan Limit	10000	400	104	1000	1000	200	35
10/31/2006			140				
6/4/2007			146				
10/25/2007		1700	1400	2700			
10/26/2007		1800	480	2600			
Total Violations	0	2	4	2	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB 6-05, AVENUE I SD**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/30/2006		601					
6/25/2007	24912						
8/13/2007				1240			
Total Violations	1	1	0	1	0	0	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB 7-7, WHITE POINT COUNTY BEACH

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
4/2/2007			110				
7/30/2007			360				
8/1/2007			140				
10/1/2007			230				
10/17/2007							40
10/18/2007							40
10/19/2007							40
10/20/2007							40
10/21/2007							40
Total Violations	0	0	4	0	0	0	5

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006					1452		
9/15/2006					1225		
9/16/2006					1176		
9/17/2006					1186		
9/18/2006					1180		
9/19/2006					1137		
9/20/2006					1020		
4/24/2007	>13000	4400	190	>13000			
6/15/2007				1900			
6/22/2007	11000						
6/28/2007	11000						
6/30/2007			140		1092		
7/1/2007					1096		
7/2/2007					1191		
7/3/2007					1315		
7/4/2007					1259		
7/5/2007					1423		
7/6/2007					1516		
7/7/2007					1587		
7/8/2007					1512		
7/9/2007					1536		
7/10/2007					1505		
7/11/2007					1307		
7/12/2007					1513		
7/13/2007	13000				1755		
7/14/2007					1817		
7/15/2007					1813		
7/16/2007					1814		
7/17/2007	>13000				1992		
7/18/2007	>13000				2170		
7/19/2007	>13000				2675		
7/20/2007					2161		
7/21/2007	>13000				2746		
7/22/2007					2570		
7/23/2007					2531		
7/24/2007					2599		
7/25/2007					2427		
7/26/2007	13000				2612		
7/27/2007	>13000				2910		
7/28/2007					2650		
7/29/2007					2602		
7/30/2007					2563		
7/31/2007					2482		
8/1/2007	13000				2676		

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
8/2/2007	>13000				2713		
8/3/2007	>13000	500			3146		
8/4/2007	>13000				3535		
8/5/2007					3427		
8/6/2007					3255		
8/7/2007	13000				3477		
8/8/2007	13000				3691		
8/9/2007					4001		
8/10/2007	>13000				5084		
8/11/2007					5039		
8/12/2007					4817		
8/13/2007					5553		
8/14/2007	11000	1300		11000	5737		
8/15/2007	>13000	6800		>13000	5955		
8/16/2007	>13000	11000		>13000	5955		
8/17/2007	11000	5500		11000	5909	235	
8/18/2007	>13000	13000		>13000	5909	299	
8/19/2007					7315	321	
8/20/2007					7107	336	
8/21/2007					6983	337	
8/22/2007			590		6837	329	
8/23/2007	>13000	1100			7183	374	
8/24/2007	13000				8273	403	
8/25/2007					7647	391	
8/26/2007					7456	426	
8/27/2007					8106	467	
8/28/2007					7618	426	
8/29/2007					6888	391	
8/30/2007					7316	403	
8/31/2007	>13000	1300			7316	461	
9/1/2007		830			7216	502	
9/2/2007					7017	502	
9/3/2007					6803	524	
9/4/2007		500			6852	523	
9/5/2007					6958	491	
9/6/2007	13000	500			6958	499	
9/7/2007					6041	468	
9/8/2007					5723	454	
9/9/2007					5504	460	
9/10/2007					5894	506	
9/11/2007					5679	460	
9/12/2007	>13000	430			5897	458	
9/13/2007	>13000	1800		>13000	5942	465	
9/14/2007	>13000	830			5942	423	

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-BC-01, BALLONA CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/15/2007					5598	335	
9/16/2007					5421	293	
9/17/2007					5189	243	
9/18/2007					5220	241	
9/19/2007					4822	227	
9/20/2007					3967	211	
9/21/2007					3948	211	
9/22/2007					3719		
9/23/2007					3482		
9/24/2007					3563		
9/25/2007					3543		
9/26/2007	13000				3781		
9/27/2007					3722		
9/28/2007			140		3879		
9/29/2007			150		3785		
9/30/2007					3547		
10/1/2007					3356		
10/2/2007					3036		
10/3/2007					2753		
10/4/2007					2594		
10/5/2007					2143		
10/6/2007					1821		
10/7/2007					1934		
10/8/2007					1941		
10/9/2007					1753		
10/10/2007					1577		
10/11/2007					1355		
10/12/2007					1203		
10/13/2007					1054		
10/23/2007			110				
10/25/2007			320				
Total Violations	30	15	7	8	113	36	0

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB MC-01, MALIBU COLONY DR**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006					2235	222	123
9/15/2006					1442		90
9/16/2006					1442		90
9/17/2006					1442		90
9/18/2006							70
9/19/2006							70
9/20/2006							46
9/21/2006							46
9/22/2006							52
9/23/2006							52
9/24/2006							52
9/25/2006							42
9/26/2006							42
6/4/2007		419					
Total Violations	0	1	0	0	4	1	13

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-MC-02, MALIBU CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
9/14/2006		1100		6800	1390	242	
9/15/2006		1100		7900	1629	276	
9/16/2006					1827	276	
9/17/2006					2155	297	
9/18/2006					2587	321	
9/19/2006					2341	297	
9/20/2006					2512	300	
9/21/2006					2114	280	
9/22/2006					1904	262	
9/23/2006					1526	236	
9/24/2006					1378		
9/25/2006					1232		
9/26/2006					1132		
9/27/2006					1248		
9/28/2006		500			1414		
9/29/2006		430		2200	1443		
9/30/2006				1400	1304		
10/1/2006					1169		
10/2/2006					1036		
10/3/2006	>13000	6300		>13000	1169		
10/4/2006					1058		
10/5/2006	13000	7300	1400	13000	1128	222	
10/6/2006						216	
10/7/2006		740				241	
10/8/2006						248	
10/9/2006					1006	265	
10/10/2006		1000	530	5500	1091	282	
10/11/2006					1053	272	
10/12/2006					1058	252	
10/13/2006						246	
10/14/2006						228	
10/15/2006						210	
10/16/2006						224	
10/17/2006		1300		6300		246	
10/18/2006			110	1100		238	
10/19/2006						238	
10/20/2006		500				263	
10/21/2006						263	
10/22/2006						283	
10/23/2006					1155	307	38
10/24/2006						283	
10/25/2006		3200	160	3200	1054	319	38
10/26/2006						319	39
10/27/2006		430	110	3400		326	42

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB-MC-02, MALIBU CREEK**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Collform	Fecal Collform	Enterococcus	Total Collform (Fecal:Total Collform Ratio > 0.1)	Total Collform	Fecal Collform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/28/2006						317	43
10/29/2006						312	47
10/30/2006						314	51
10/31/2006						289	47
4/6/2007		580		3400			
4/7/2007	>13000	1600		>13000			
4/24/2007	11000	740					
4/25/2007	11000	7300		11000			
4/27/2007		430		1600			
5/18/2007		430	190				
5/19/2007		430					
6/2/2007			270				
6/16/2007		8700	310	9600			
10/19/2007		500		1300			
10/20/2007	>13000	830					
10/24/2007	11000	500					
10/30/2007		580	120				
10/31/2007		910		5900			
Total Violations	7	25	9	18	28	37	8

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
 SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
 ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
 SITE ID SMB MC-03, MALIBU PIER**

Date of Violation(s)	Single Sample Result (MPN/100 ml)				30-day Geometric Mean Result* (MPN/100 ml)		
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform > 0.1)	Total Coliform	Fecal Coliform	Enterococcus
Basin Plan Limit	10000	400	104	1000	1000	200	35
10/10/2006			422				
10/11/2006							
10/12/2006							40
10/13/2006							40
10/14/2006							40
10/15/2006							40
10/16/2006							40
10/17/2006							40
10/23/2006							40
10/24/2006							42
10/25/2006							42
10/26/2006							68
10/27/2006							68
10/28/2006							68
10/29/2006							68
10/30/2006							68
10/31/2006							42
6/4/2007			131				42
10/29/2007			109	2046			
Total Violations	0	0	3	1	0	0	16

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

EXHIBIT C

***Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice***



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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

March 4, 2008

Mr. William T. Fujioka
Chief Executive Officer
County of Los Angeles
500 West Temple Street, Room 713
Los Angeles, CA 90012

VIA CERTIFIED MAIL

**ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13383
(REGARDING VIOLATIONS OF ORDER NO. 01-182 AS AMENDED BY ORDER NO.
R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, W DID
4B190107099)**

Dear Mr. Fujioka:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the County of Los Angeles is a Permittee.

BACKGROUND

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the municipal separate storm sewer system (MS4) that cause or contribute to exceedances of the bacteria RWLs.

The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay and Marina del Rey Harbor, navigable waters of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline and harbor water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the

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receiving waters at beaches along Santa Monica Bay and within Marina del Rey Harbor. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

As documented in the enclosed Notice of Violation, technical staff of the Regional Board has concluded that the County of Los Angeles is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline and harbor monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Parts 2.5 and 2.6 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at 29 shoreline and harbor monitoring sites located along Santa Monica Bay beaches and within Marina del Rey Harbor to which the County of Los Angeles discharges via the MS4, on 923 days, which included 1,603 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are detailed in the enclosed Notice of Violation. The County of Los Angeles is jointly responsible for violations at these monitoring sites along with the other Permittees with land area within the watersheds draining to these sites.

REQUIREMENT TO PROVIDE INFORMATION

California Water Code § 13383 provides the Regional Board the authority to require a Permittee to monitor and report and provide other information, under penalty of perjury, that the Regional Board requires. Pursuant to CWC § 13383, the County of Los Angeles is hereby ordered to submit the information required in this Order by April 21, 2008. Furthermore, pursuant to CWC § 13385, failure to comply with any requirements established pursuant to CWC § 13383 may result in the imposition of administrative civil liability penalties by the Regional Board of up to \$10,000 for each day in which the violation occurs after the April 21, 2008 due date. (CWC § 13385(a)(3).)

Pursuant to CWC § 13383, the Regional Board directs the County of Los Angeles to provide information evaluating and documenting (i) the causes of the violations, (ii) remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit and those taken since, and (iii) the County's plans for additional corrective and preventative actions to bring MS4 discharges into compliance with the bacteria RWLs applicable to the Santa Monica Bay and Marina del Rey Harbor for the upcoming summer dry weather period, beginning on April 1, 2008.

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Specifically, the County of Los Angeles is required to submit reports providing the following information for each of the shoreline and harbor monitoring sites, for which it is jointly responsible, where violations have been documented. The reports shall be signed by an authorized signatory for the County of Los Angeles, under penalty of perjury. The reports shall provide:

1. The source(s) of the violations for each shoreline and harbor compliance location, including an evaluation of dry weather discharges from the MS4 at each noncompliant shoreline and harbor location on the date(s) of the violations. The evaluation shall include, where available:
 - a. Details regarding dry weather discharge from the MS4 to each noncompliant shoreline and harbor location including, but not limited to storm drain position, volume estimate, flow direction, presence of ponding, and proximity to surf.
 - b. Details regarding existing treatment of summer dry weather discharge from the MS4 at each noncompliant shoreline and harbor location, and any upstream treatment including, but not limited to type(s) of treatment system(s), operational capability(ies), and operational status on date(s) of violation.
 - c. Results of any source investigation(s) of the subwatershed, pursuant to protocols established under CWC § 13178, detailing the locational and/or biological origin of the bacteria causing or contributing to RWL violations.
2. A detailed description of remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit (i.e., before September 14, 2006 for shoreline sites along Santa Monica Bay, and before August 9, 2007 for harbor sites within Marina del Rey Harbor) and those remedial actions taken since, and the results thereof.
3. A detailed description of additional corrective and preventative actions that will be taken for summer dry weather discharges from the MS4 to preclude future violations. The report shall include a time schedule designed to achieve full compliance. This timeline shall not be construed as an authorization for any past or future RWL violations.
4. For site SMB BC-01, which is impacted by discharges from Ballona Creek watershed for which there is a separate bacteria TMDL to address bacteria impairments in Ballona Creek and its tributaries, an evaluation and supporting documentation of whether the sources causing the violations are originating from upstream sources within the Ballona Creek watershed, or whether the causes of the violations are originating from sources in proximity to the shoreline monitoring location. If the causes of the violations are originating from sources in proximity to the shoreline monitoring location, then the County of Los Angeles shall provide the information required in 1 through 3 above.

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5. For sites SMB MC-01, SMB MC-02 and SMB MC-03, which are impacted by discharges from Malibu Creek watershed for which there is a separate bacteria TMDL to address bacteria impairments in Malibu Creek and its tributaries, an evaluation and supporting documentation of whether the sources causing the violations are originating from upstream sources within the Malibu Creek watershed, or whether the causes of the violations are originating from sources in proximity to the shoreline monitoring location. If the causes of the violations are originating from sources in proximity to the shoreline monitoring location, then the County of Los Angeles shall provide the information required in 1 through 3 above.

In addition, should the County of Los Angeles contend that it is not responsible for one or more of the violations, the County shall also submit the following information, if applicable:

1. Evidence that the RWL violation(s) at the shoreline or harbor monitoring site is not the result of discharge from the MS4 but from some other sources or discharges;
2. Evidence that the County of Los Angeles does not discharge dry weather flow into the Santa Monica Bay or Marina del Rey Harbor at the shoreline or harbor monitoring site, respectively; and
3. Evidence that the County of Los Angeles' summer dry weather discharges into the Santa Monica Bay or Marina del Rey Harbor are treated to a level that does not exceed either the single sample or geometric mean bacteria RWLs.

CIVIL LIABILITY

Pursuant to CWC § 13385(a)(3), the County of Los Angeles is subject to penalties of up to \$10,000 for any violation of the requirements set forth in this Order. These civil liabilities may be assessed by the Regional Board beginning with the date on which a violation of this Order first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The County of Los Angeles may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above, if compliance does not timely occur.

RIGHT TO PETITION

Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition within 30 days of the date of this Order with the State Water Resources Control Board (SWRCB). The petition must be sent to the SWRCB, P.O. Box 100, Sacramento, CA 95812.

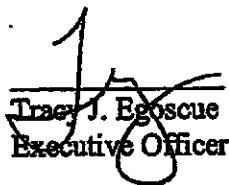
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If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosure: Notice of Violation, dated March 4, 2008

cc: Mr. Jan Takata, Chief Executive Office, County of Los Angeles
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

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EXHIBIT D

***Environmental Groups' Request To Consider Supplemental Evidence And Request For
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California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

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Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Donald L. Wolfe, Director
County of Los Angeles
Flood Control District
P.O. Box 1460
Alhambra, CA 91802-1460

VIA CERTIFIED MAIL

**ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13383
(REGARDING VIOLATIONS OF ORDER NO. 01-182 AS AMENDED BY ORDER NO.
R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID
4B190107101)**

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Mr. Donald L. Wolfe

- 5 -

March 4, 2008

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosure: Notice of Violation, dated March 4, 2008

cc: Mr. Mark Pestrella, Assistant Deputy Director, Los Angeles County Public Works
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

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EXHIBIT E

*Environmental Groups' Request To Consider Supplemental Evidence And Request For
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Department of Public Works

Resident | Business | Government

Municipal Stormwater Permit
 886CleanLA
 Standard Urban Stormwater Mitigation Plan (SUSMP)
 NPDES
 LA County Stormwater Ordinance
 State Water Resources Control Board
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LOS ANGELES COUNTY 2006-07 STORMWATER MONITORING REPORT

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Mark Pestrella
 Assistant Deputy Director/
 Division Engineer

Terri Grant
 Assistant Division Engineer

Hector J. Bordes
 Assistant Division Engineer

Rossana D'Antonio
 Assistant Division Engineer

For information call
 (626) 458-4300

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Appendix D
Santa Monica Bay Shoreline Monitoring Municipal Separate
Storm Sewer System (MS4) Report(2006-07)

**SANTA MONICA BAY SHORELINE MONITORING
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) REPORT**

(July 1, 2006 – June 30, 2007)

Monitoring and Assessment by the City of Los Angeles Environmental Monitoring Division

I. INTRODUCTION

Santa Monica Bay (SMB) plays a very important part in Southern California's recreation, tourism, and commercial economy, but for decades it has been used as a repository for point and non-point source discharges. These discharges include those from wastewater treatment plants, storm drains, rivers, and creeks. Major concerns regarding the effects of these discharges on the natural environment, recreation, and other beneficial uses of the Bay, in addition to public health, led to the regulation of treatment plant discharges. Because of effluent discharge from the Hyperion Treatment Plant (HTP) into Santa Monica Bay waters, the City of Los Angeles (CLA) has been monitoring Santa Monica Bay shoreline water since the late 1940's. Historic water quality monitoring data has indicated that Hyperion's discharge has no discernible impact on the water quality of the SMB shoreline. Instead, test results suggest that runoff to the Bay originating inland and reaching the Bay via storm drains (particularly during periods of heavy rainfall), sewage spills, and illicit discharges, is an important source of contamination (CLA, EMD 2005).

Urban runoff, which mainly originates from rainfall and street runoff (Dojiri et al., 2003) and reaches Santa Monica Bay through approximately 200 outlets, is the largest nonpoint source of pollution to Santa Monica Bay. Street runoff can result from irrigation, domestic, commercial, and industrial activities. It has been estimated that Santa Monica Bay receives a flow of 10-25 million gallons per day from storm drains during dry weather (SMBRP 1996). During rain events, the concentrations of pollutants (heavy metals, human and animal wastes, petroleum- and automobile-based chemicals) are more dilute, but the mass loading is much larger due to wash-down effects of the rain on the surrounding urban environment.

The City of Los Angeles has taken numerous actions to improve water quality in Santa Monica Bay. The CLA collaborated with the City of Santa Monica on the Santa Monica Urban Runoff Recycling Facility (SMURRF), which processes 500,000 gallons of runoff per day during dry weather. Additionally, the City of Los Angeles's Watershed Protection Division has employed Low-Flow Diversion systems to direct flows from major storm drains to HTP during dry weather. Also, the City's Environmental Monitoring Division (EMD) provided co-leadership and proactive participation in drafting the Coordinated Shoreline Monitoring Plan for the state and federally mandated Santa Monica Bay Beaches Bacterial Total Maximum Daily Load (SMBBB TMDL) program. The SMBBB TMDLs, which became effective July 2003, have stringent compliance requirements for Santa Monica Bay shoreline storm drains. Based on daily monitoring, the summer and winter dry-weather SMBBB TMDLs allow for zero and up to three annual exceedences of AB 411 standards, respectively. Compliance must be obtained within three years for the summer dry-weather period and within six years for winter dry-weather. The wet-weather portion, which allows for up to seventeen annual exceedences, must be met within eighteen years. The implementation of the coordinated monitoring plan began in November 2004. With the approval from the Regional Water Quality Control Board (RWQCB), the shoreline monitoring requirements under the SMBBB TMDL were incorporated into the Municipal Separate Storm Water Sewer System (MS4) permit to promote consistency of the monitoring programs and to conserve resources and staffing, while improving compliance monitoring and protecting public health.

The following changes in the MS4 monitoring program became effective in November 2004:

- Sampling locations moved from 50 yards from storm drains to point zero.
- Monitoring frequency decreased from seven to six days per week.
- Frequency of enterococcus testing changed from five times per month to five days per week.
- Enterococcus testing method changed from membrane filtration to the chromogenic substrate method.
- In July 2005, monitoring frequency for nine stations was reduced to 5 days per week.
- In July 2005, monitoring frequency for nine stations was reduced to weekly.

This report summarizes the City of Los Angeles EMD's Santa Monica Bay shoreline bacteriological data for the Fiscal Year 2006-2007 (July 1, 2006 to June 30, 2007). The bacteriological data consists of bacterial densities for three groups of indicator bacteria. These indicator groups are the total coliforms, fecal coliforms/*E. coli*, and the enterococci. Their presence in water, especially fecal coliforms/*E. coli* and enterococci, is an indicator of recent fecal contamination, which is the major source of many waterborne diseases (Csuros and Csuros 1999). Monitoring indicator bacteria is currently one of the most efficient means of predicting the presence pathogen in marine water.

EMD prepares the daily shoreline report and evaluates the data relative to the California State AB411 bathing water quality standards for bacterial densities (Table 1). The Santa Monica Bay shoreline bacterial data are then reported to the Los Angeles County Department of Health Services (LACDHS). Subsequently, LACDHS takes steps (such as posting health hazard warning signs for beach users) to notify beach goers when an exceedance of bacterial standards occurs.

Table 1. AB411 Bathing Standards

Density of bacteria in a single sample shall not exceed:

- 10,000 total coliform bacteria/100 ml; or
- 400 fecal coliform bacteria/100 ml; or
- 104 enterococcus bacteria/100 ml; or
- 1,000 total coliform bacteria/100 ml, if the ratio of fecal/total coliform exceeds 0.1

Current indicator bacterial quantification methods depend on incubation and growth of bacteria in the laboratory. Results are presently obtained approximately 18 to 24 hours after sample collection, thus preventing early notification of public health and contamination source identifications. Beginning in November 2004, the chromogenic substrate method was used for all SMB shoreline indicator bacterial quantification, including enterococcus, which had previously been quantified using membrane filtration, an analytical method that took 48 hours to complete. The City also participated in the Southern California Coastal Water Research Project Rapid Indicator Detection Methods Study to develop newer methods that can provide results faster.

III. RESULTS

Rainfall

During the 2006-2007 year, measurable rainfall occurred over the target period. The total rainfall for Year 2006-2007 was 3.2 inches, which is slightly higher than last year's rainfall of 2.63 inches for Los Angeles (based on measurements at Downtown Los Angeles, USC rain gauge). The highest rainfall amount was in Feb. Only trace amounts to no rainfall was recorded for July, August and September of 2006 and May and June 2007 (Figure 2).

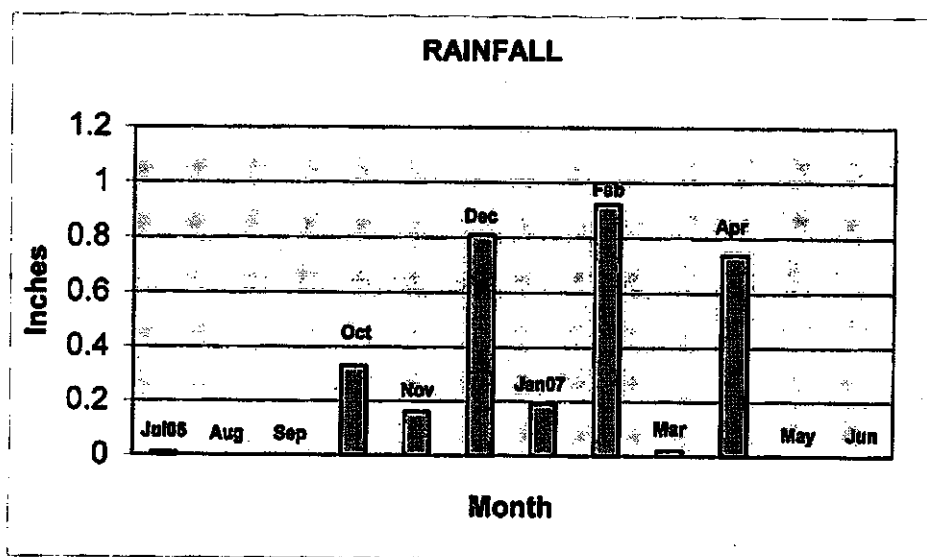


Figure 2. Monthly rainfall amounts at Downtown Los Angeles, USC, July 2006 to June 2007.

Shoreline Stations

The annual geometric means for all indicator bacteria were higher during wet weather than during dry weather (Figure 3). The highest bacterial densities during periods of dry weather were often found either at stations associated with flowing storm drains, at stations adjacent to piers, or at stations with compromised circulation. Northern Santa Monica Bay includes stations from Malibu (S1, Malibu Lagoon) to Marina Del Rey (S9, Mother's Beach, Marina Del Rey). The northern SMB shoreline stations' annual bacterial geometric means generally were higher than those of the southern SMB shoreline stations for all indicator bacteria. Dry-weather geometric means for all three indicators were consistently highest at northern Bay

SANTA MONICA BAY MS4 SHORELINE STATIONS

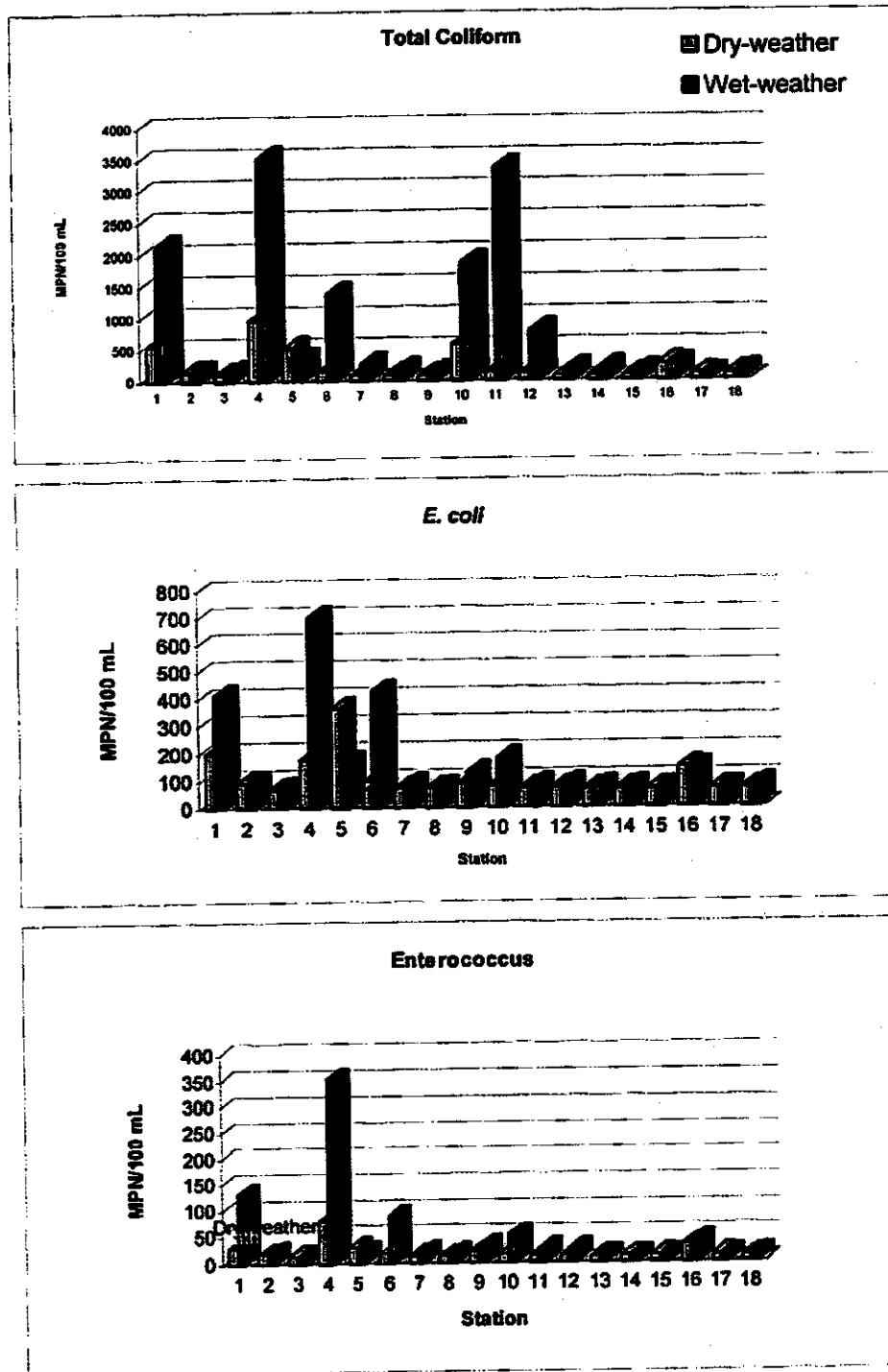


Figure 3. Annual geometric means for indicator bacteria at each shoreline station in Santa Monica Bay during Fiscal Year 2006-2007 wet and dry weather.

stations S4 (Santa Monica Canyon), S1, and S5 (Santa Monica Pier). As previously noted, wet-weather geometric means for all bacterial indicators were higher than those for dry-weather. Sampling locations in the northern Bay with the highest wet-weather bacterial densities for all three indicators were stations S4, S1, and S6.

Southern Santa Monica Bay includes all of the stations south of Ballona Creek, starting from station S10 (Ballona Creek) to station S18 (Malaga Cove, Palos Verdes Estates). The bacterial densities at the south SMB shoreline stations were typically lower than those in the north SMB, with the exception of stations S10 and S16 (Redondo Beach Pier). During the dry-weather period, stations S10 and S16 had the highest total coliform geometric means in the southern Bay, while the highest *E. coli* and enterococcus geometric means were found at station S16. The highest, *E. coli* and enterococcus wet-weather geometric means were at stations S10 and S16. The highest wet-weather total coliform densities in the southern Bay were at stations S10, S11 (Culver SD) and S12 (Imperial Hwy storm drain) (Figure 3).

Ballona Creek

The monthly geometric means for the two Ballona Creek sampling locations, Centinela and Pacific Avenues, were calculated using data from wet- and dry-weather periods. At the Centinela sampling station, the highest overall monthly geometric means for total coliform, *E. coli*, and enterococcus were during the period of July through December 2006, with the highest densities in August (Figure 4); the majority of these months are in the summer dry-weather period of April 1 – October 31. The lowest monthly geometric means for total coliforms, *E. coli*, and enterococcus were during the period from January to June 2007, with the lowest densities in March and May 2007.

The Pacific Ave station is located downstream from Centinela and is closer to the mouth of Ballona Creek. At this station, the total coliform geometric means were highest in July 2006. *E. coli* and enterococcus geometric means were highest from November 2006 to February 2007 (Figure 4). Geometric means for total coliform were lowest in September and November of 2006, and January, March, and May of 2007. Lowest *E. coli* geometric means were in September 2006 and January and May of 2007. Enterococcus geometric means were lowest in August and September of 2006, and May of 2007. The bacterial indicator geometric means at Pacific were generally lower than at the Centinela station.

BALLONA CREEK STATIONS

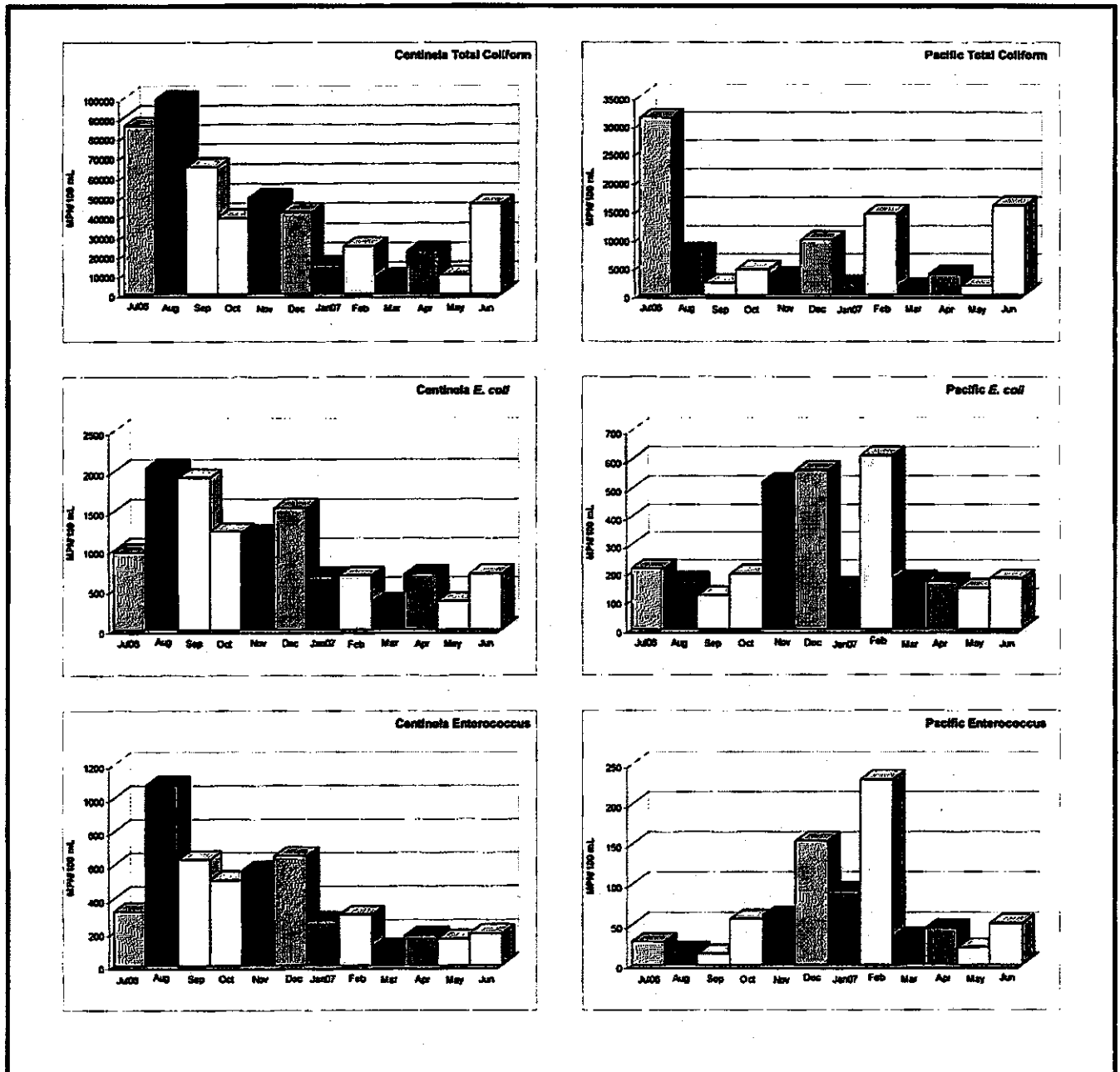


Figure 4. Monthly geometric means for indicator bacteria at Ballona Creek stations, dry- and wet-weather combined. Centinela and Pacific Avenues, July 2005 to June 2006.

Water Quality Standards Compliance

Table 2 lists the percent compliance for all AB411 bathing water quality standards for SMB shoreline stations during Fiscal Year 2006-2007. The percent compliances are based on dry-weather bacterial densities and reflect a measure of water quality for public health. Station S5 (Santa Monica Pier) was the station with lowest percent compliance of water quality standards and highest number of standard exceedances (Figure 5). Next in order of lowest percent compliance were stations S4 (Santa Monica Storm Drain) and S1 (Malibu Lagoon), S16 (Redondo Beach Pier), and S2 (Temescal Canyon SD). Of these five stations, four are in the northern part of the Santa Monica Bay.

Southern stations S13 (40th Street, Manhattan Beach) and S18 (Malaga Cove, Palos Verdes Estates) were 100% compliant for all standards. This was a decrease compared to last year when five stations were 100% compliant. There were no northern SMB stations with 100% compliance for all standards, although station S8 was very close to this achievement.

Table 2. Percent compliance of bacterial densities at EMD Santa Monica Bay shoreline stations with California AB411 bathing water standards during dry weather from July 1, 2005 through June 30, 2006.

STATION	TOTAL ¹	<i>E. COLI</i> ²	ENTERO ³	EC:TC ⁴ RATIO
S01	92.3	78.1	74.2	86.9
S02	100	93.1	92.7	93.5
S03	100	98.1	100	98.1
S04	91.2	86.5	82.3	71.2
S05	98.8	73.1	59.6	91.5
S06	98.1	96.9	94.6	95.0
S07	100	100	99.6	97.3
S08	100	100	100	98.1
S09	100	98.1	95.4	93.1
S10	94.6	98.1	98.5	96.5
S11	98.1	100	100	98.1
S12	96.2	98.1	98.1	100
S13	100	100	100	100
S14	100	100	100	98.1
S15	100	100	100	98.1
S16	100	91.2	85.4	84.6
S17	100	100	100	98.1
S18	100	100	100	100

¹10,000 Total coliform bacteria/100ml
²400 *E. coli* bacteria/100ml
³104 Enterococcus bacteria/100ml
⁴Total coliform level greater than 1000 bacteria/100ml and *E. coli*:TC ratio is greater than 0.1

The number of exceedances of the AB411 standards during the dry-weather 2006-2007 period is presented in Table 3. As mentioned above, station S5, followed by stations S4 and S1 had the most exceedances. The southern part of the Bay had the most stations in compliance; the major exceptions, for the second year in a row, being stations S16 (Redondo Beach Pier), which had a high exceedance frequency for all indicators, except total coliform, and S10, which had the highest frequency for total coliform.

Table 3. Number of exceedances of AB411 standards at SMB shoreline stations during dry-weather from July 1, 2006 through June 30, 2007.

Station	S1	S2	S3	S4	S5	S6	S7	S8	S9	S10	S11	S12	S13	S14	S15	S16	S17	S18
TC Exceedances	20	0	0	23	3	5	0	0	0	14	1	2	0	0	0	0	0	0
EC Exceedances	67	19	0	46	105	14	1	0	12	4	0	1	0	0	0	38	0	0
ENT Exceedances	34	17	1	75	22	13	7	1	18	9	1	0	0	1	1	40	1	0
EC/TC Ratio Exceedances	57	18	1	35	70	8	0	0	5	5	0	1	0	0	0	23	0	0
Total Exceedances	178	54	2	179	200	40	8	1	35	32	2	4	0	1	1	101	1	0

Below, Figure 5 shows the number of exceedances compared to the number of storm drain flow days for MS4 stations. There is no evident correlation between the amount of flow (or the number of days of flow) and the number of exceedances. For example while stations S1 and S4 both had high exceedances and flows, station S2 also had a high number of flow days but with a low number of exceedances, and station S5 showed just the opposite, a low number of flow days with high numbers of exceedance.

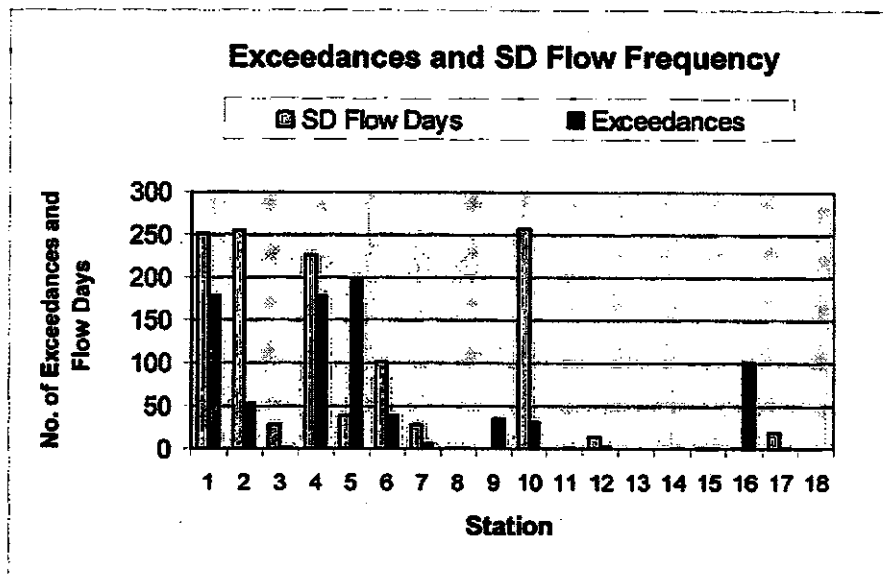


Figure 5. Number of Storm Drain Flows compared to dry-weather exceedances at SMB MS4 stations for the 2006 - 2007 year.

Field Observations

Table 4 provides a summary of field observations of plastic goods (tampon inserters), rubber goods (prophylactic rings), and grease particles. All are considered to be materials of sewage origin (MOSOs), which, when found, trigger an incidence of treatment plant non-compliance. No grease particles have been observed since 1998. The occurrence of plastic and rubber goods along the SMB shoreline decreased markedly from 1994 to 2004 (CLA, EMD, 2005). During Fiscal Year 2006-2007, none of the 18 stations had any observed incidences of plastic goods, rubber goods, or grease particles.

Table 4. Number of visual observations of material of sewage origin at shoreline stations, during Fiscal Year 2005-2006

Materials of Sewage Origin (FY 05-06)							
Statio:	PG*	RG*	GP*	Statio	PG*	RG*	GP*
S1	0	0	0	S10	0	0	0
S2	0	0	0	S11	0	0	0
S3	0	0	0	S12	0	0	0
S4	0	0	0	S13	0	0	0
S5	0	0	0	S14	0	0	0
S6	0	0	0	S15	0	0	0
S7	0	0	0	S16	0	0	0
S8	0	0	0	S17	0	0	0
S9	0	0	0	S18	0	0	0

***LEGEND**
PG-PLASTIC GOODS
RG-RUBBER GOODS
GP-GREASE PARTICLES

IV. DISCUSSION

Historic monitoring data of Santa Monica Bay has indicated that the wastewater discharge from the Hyperion Treatment Plant has no observable impact on water quality at CLA monitored shoreline stations. Urban runoff has been identified as one of the major contributors of bacterial contamination to Santa Monica Bay (RWQCB, 2005). The effects of urban runoff on impacted shorelines have been studied extensively by regulatory agencies, environmental organizations, and universities. Runoff flows over rooftops, freeways, parking lots, construction sites, industrial facilities, and other impervious and non-impervious surfaces, collect pollutants and transport them through open channels and underground pipes directly to the Bay. Even in dry-weather, ten to twenty-five million gallons of water flow daily through storm drains into Santa Monica Bay (Santa Monica Bay Restoration Commission, 2004).

Past water quality data has shown that sites with high bacterial densities were associated with either a storm drain (or a lagoon) and/or a large heavily used pier. Storm drain data suggests that the number of flow days, in conjunction with the rate of flow and the location of the site, can be predictive of high bacterial indicator densities (CLA, EMD 2005).¹ Southern stations S11 through S18 (excluding S16, proximal to a large, active pier), had lower overall counts than did the northern sites. It seems apparent that sites associated with storm drains with few flow days and low-flow rates contributed lower bacterial contamination overall, confirming that urban flow and runoff is the major contributor of pollutants to these shoreline receiving waters. The size and activity of the watershed drained by the storm drains also, more than likely, plays a large part in this. This investigation would involve a scale of study outside of the present scope of SMB MS4 monitoring.

Table 5. Storm drain flow occurrences, Fiscal Year 2005-2006.

Northern Stations	S1	S2	S3	S4	S5	S6	S7	S8	S9
Flow Days	251	255	28	226	40	102	29	1	0
Average Flow rate	3	4	2	3	1	2	1	3	0
Location	Lagoon	Storm Drain	Storm Drain	Storm Drain	Pier	Storm Drain	Storm Drain	Storm Drain	Open Beach
Southern Stations	S10	S11	S12	S13	S14	S15	S16	S17	S18
Flow Days	258	0	14	0	0	2	2	20	0
Average Flow rate	3	0	2	0	0	0	2	2	0
Location	Storm Drain	Storm Drain	Storm Drain	Storm Drain	Pier	Pier	Pier	Storm Drain	Open Beach
*FLOW RATE 1 - Low 2 - Moderate 3 - Heavy 4 - Pounded									

The northern part of the Bay has a number of consistently flowing storm drains. Stations S1 and S4 are sites with high densities, a high number of observed flow days, and high average flow rates, as does station S5, although it had fewer flow days and a low flow rate (Tables 3 and 5). Stations S1, S4, and S5 are located near a lagoon, storm drain, and pier, respectively. Surfrider Beach (Station S1, Malibu Lagoon) has been designated as one of the most polluted beaches in Santa Monica Bay (CLA, EMD 2003). It is located at the outlet of the entire Malibu Creek watershed, which has a drainage area equal to approximately 105 square miles. When the lagoon is breached, it brings a heavy discharge of pollutants into the surf zone, resulting in increased bacterial densities in the Bay. Station S4 has a large watershed area that contains horse corrals, a golf course, and some houses on septic systems, all of which most likely contributed to its having the

¹ It is important to note that the position of the mouth of storm drain contributes to the observed number of flow days. Storm drain position (buried in sand, submerged, or extended too far in the surf) or the location of the mouth of the drain, may obscure visibility or make the storm drain inaccessible. Flow observations are noted to the best of the observer's ability, but due to safety concerns, observers are not allowed under piers or to venture far into the surf to improve visibility.

highest bacterial densities of all stations. Station S5 (Santa Monica Pier) is adjacent to a large, highly active pier with restaurants, restrooms, an aquarium, and is frequented by a large tourist population.

In its efforts to improve water quality, the City of Los Angeles has employed storm water low-flow diversion structures. The CLA has a program geared toward increasing the number of dry-weather storm drain flows diverted to sanitary sewers. Overall, data for Fiscal Year 2006-2007 exhibited a decrease in AB411 standard exceedances compared to the previous fiscal year.

Ballona Creek is a concrete channel with year-round flow and a drainage area equal to approximately 89 square miles. The Centinela station is under tidal influence when ocean tides exceed 3.5 feet. The Pacific station is located downstream of Centinela and is close to the shoreline. It is sampled to assess the effect that tidal dilution may have on the upstream bacterial levels. This dilution effect is suggested by the decreased geometric means for total coliform, fecal coliform/*E. coli*, and enterococcus at Pacific as compared to Centinela.

Studies have shown that urban runoff and storm drain flows leading into the Bay, not effluent discharged from HTP, are the major contributors of shoreline pollution. The largest source of stormwater pollution is the general public. They are contributors of trash containing fast-food wrappers, cigarette butts, Styrofoam containers, motor oil, antifreeze, pesticides, sewage overflow, and pet waste (CLA, EMD 2005). Plans to reduce stormwater pollution and urban runoff, which include structural best management practices (BMPs) and educational programs geared toward the general public, businesses, and City employees, are expected to contribute to improving and protecting water quality along the Santa Monica Bay shoreline.

V. LITERATURE CITED

APHA. See American Public Health Association.

American Public Health Association. 1998. Standard methods for the examination of water and wastewater, 20th ed. American Public Health Association, Washington, DC, pp. 9-1 to 9-115.

California Regional Water Quality Control Board, Los Angeles Region. 2005. Monitoring and Reporting Program No. 1492 for the City of Los Angeles, Hyperion Treatment Plant. Order No. R4-2005-0020, NPDES No. CA0109991. Attachment T, pg. T-2 to T-3.

CLA, EMD. See City of Los Angeles, Environmental Monitoring Division.

City of Los Angeles, Environmental Monitoring Division. 2003. Marine Monitoring in Santa Monica Bay: Biennial Assessment Report for the Period of January 2001 through December 2002. Report submitted to EPA and RWQCB (Los Angeles). Department of Public Works, Bureau of Sanitation, Hyperion Treatment Plant, Playa del Rey, California, pp. 1-1 to 8-37 + appendices.

City of Los Angeles, Environmental Monitoring Division. 2005. Marine Monitoring in Santa Monica Bay: Biennial Assessment Report for the Period of January 2003 through December 2004. Report submitted to EPA and RWQCB (Los Angeles). Department of Public Works, Bureau of Sanitation, Hyperion Treatment Plant, Playa del Rey, California, pp. 1-1 to 8-37 + appendices.

Csuros, Maria, and C. Csuros. 1999. Microbiological examination of water and wastewater. CRC Press, Boca Raton, Florida, 360 pp.

Dojiri, M., M. Yamaguchi, S.B. Weisberg, and H.J. Lee. 2003. Changing anthropogenic influence on the Santa Monica Bay watershed. Marine Environmental Research, 56(2003): 1-14.

RWQCB. See California Regional Water Quality Control Board, Los Angeles Region

SMBRP. See Santa Monica Bay Restoration Project.

Santa Monica Bay Restoration Project. 1996. An epidemiological study of possible adverse health effects of swimming in Santa Monica Bay. Santa Monica Bay Restoration Project, Monterey Park, CA, 211 pp.

Santa Monica Bay Restoration Commission. 2004. "Monitoring in the Santa Monica Bay: Water Quality" 2003. Santa Monica Bay Restoration Commission, Los Angeles, CA, 90013. <http://www.santamoncabay.org/site/problems/layout/water.jsp>.

EXHIBIT F

***Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice***

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Appendix D
Santa Monica Bay Shoreline Monitoring Municipal Separate
Storm Sewer System (MS4) Report (2007-08)

**SANTA MONICA BAY SHORELINE MONITORING
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) REPORT
(July 1, 2007 – June 30, 2008)**

Monitoring and Assessment by the City of Los Angeles Environmental Monitoring Division

I. INTRODUCTION

Santa Monica Bay (SMB) plays a very important part in Southern California's recreation, tourism, and commercial economy. The City of Los Angeles (CLA) has been monitoring Santa Monica Bay shoreline water quality parameters since the late 1940's. Water quality monitoring data indicate that discharge from the Hyperion Treatment Plant (HTP) does not have a discernible impact on the water quality of the SMB shoreline (CLA, EMD 2005). In the interest of protecting public health and preserving the natural environment, recreation, and other beneficial uses of Santa Monica Bay, the City of Los Angeles continues to implement measures to improve the Bay's water quality. Pro-active and regulation-driven measures include Low-Flow Diversion systems to direct flows from storm drains and urban runoff to HTP during dry-weather; the Santa Monica Urban Runoff Recycling Facility (SMURRF), on which the City of Los Angeles collaborated; additional ongoing institutional and structural Best Management Practices (BMPs), and scientific studies. The monitoring data shows steady improvement in water quality, suggesting these efforts are achieving success.

The City's Environmental Monitoring Division (EMD) provided co-leadership and proactive participation in drafting the Coordinated Shoreline Monitoring Plan for the state and federally mandated Santa Monica Bay Beaches Bacterial Total Maximum Daily Load (SMBBB TMDL) program. The SMBBB TMDLs, which became effective July 2003, have stringent compliance requirements for Santa Monica Bay shoreline storm drains. Based on daily monitoring, the summer and winter dry-weather SMBBB TMDLs allow for zero and up to three annual exceedances of AB 411 standards, respectively. Compliance was to be obtained within three years for the summer dry-weather period and within six years for winter dry-weather. The wet-weather portion, which allows up to seventeen exceedances annually, must be met within eighteen years. Implementation of the Coordinated Shoreline Monitoring Plan began in November 2004. With approval from the Regional Water Quality Control Board (RWQCB), the shoreline monitoring requirements under the SMBBB TMDL were incorporated into the Municipal Separate Storm Water Sewer System (MS4) permit to promote consistency of the monitoring programs and to conserve resources and staffing, while improving compliance monitoring and protecting public health.

The following changes in the MS4 monitoring program became effective in November 2004:

- Sampling locations moved from 50 yards from storm drains to point zero.
- Monitoring frequency decreased from seven to six days per week.
- Frequency of enterococcus testing changed from five times per month to five days per week.
- Enterococcus testing method changed from membrane filtration to the chromogenic substrate method.

Additionally, in July 2005, the following changes became effective:

- Monitoring frequency for nine stations was reduced to 5 days per week.
- Monitoring frequency for nine stations was reduced to weekly.

This report summarizes the City of Los Angeles EMD's Santa Monica Bay shoreline bacteriological data for the Fiscal Year 2007-2008 (July 1, 2007 to June 30, 2008). The bacteriological data consists of densities for three groups of indicator bacteria. These indicator groups are the total coliforms, fecal coliforms/*E. coli*, and the enterococci. Their presence in water, especially fecal coliforms/*E. coli* and enterococci, is an indicator of recent fecal contamination, which is the major source of many waterborne diseases (Csuros and Csuros 1999). Monitoring indicator bacteria currently is one of the most efficient means of predicting the presence of pathogens in marine water.

EMD prepares the daily shoreline report and evaluates the data relative to the California State AB411 bathing water quality standards for bacterial densities (Table 1). The Santa Monica Bay shoreline bacterial data then are reported to the Los Angeles County Department of Public Health (LACDPH). Subsequently, LACDPH takes steps (such as posting health hazard warning signs for beach users) to notify beach goers when an exceedance of bacterial standards occurs.

Density of bacteria in a single sample shall not exceed:

- 10,000 total coliform bacteria/100 ml; or
- 400 fecal coliform bacteria/100 ml; or
- 104 enterococcus bacteria/100 ml; or
- 1,000 total coliform bacteria/100 ml, if the ratio of fecal/total coliform exceeds 0.1

Table 1. AB411 Bathing Standards

Current indicator bacterial quantification methods depend on incubation and growth of bacteria in the laboratory. Results presently are obtained approximately 18 to 24 hours after sample collection, thus preventing early notification of potential public health risks and contamination source identifications. Since November 2004, the chromogenic substrate method has been used for all SMB shoreline indicator bacterial quantifications, including enterococcus, which previously had been quantified using membrane filtration, an analytical method that took 48 hours to complete. The City also participated in the Southern California Coastal Water Research Project Rapid Indicator Detection Methods Study to develop newer methods that can provide results faster.

II. MATERIALS AND METHODS

A. SAMPLE COLLECTION

For the MS4 program, EMD monitors 18 SMB shoreline stations ranging from Surfrider Beach (S1, Malibu Lagoon) in Malibu southward to Malaga Cove (S18, Palos Verdes Estates; Figure 1). On November 1, 2004, the City of Los Angeles began participating in the Coordinated Shoreline Monitoring Plan (CSMP) for the Santa Monica Bay Beaches Bacterial TMDLs. Some TMDL monitoring requirements were incorporated into the MS4 permit, and as a result, the monitoring frequency of nine stations, S3, S8, S11 through S15, S17, and S18, was reduced from seven days to one day per week. The monitoring frequency of the remaining nine stations, S1, S2, S4 through S7, S9, S10, and S16, was changed from seven to five days per week. All shoreline stations since November 1, 2006 have been sampled at point zero, which is defined as the point at which the discharge from a storm drain or creek initially mixes with the receiving water. A station having no storm drain or creek associated with it is referred to as an open beach site. All samples were collected at ankle-depth level during daylight hours.

B. SAMPLE ANALYSIS

Total coliform and *E. coli* bacterial densities were determined by the chromogenic substrate method following Standard Methods section 9223 (APHA 1998), and *Enterococcus* density was determined by Enterolert™, per manufacturer's instructions.

Visual field observations for shoreline stations were made along a 20-foot stretch of shoreline to the north and south of each station. This area around each station was observed for the presence of materials of sewage and non-sewage origin, any unusual odors of sewage and non-sewage origin, plankton color, and the presence of flow and flow rate (visual rating only) from storm drains. Storm drain flow data and Low-Flow-Diversion operation is available upon request. Materials of sewage origin included plastic goods, rubber goods, and grease particles. Non-sewage origin materials included ocean debris, seaweed, refuse, tar, and dead marine animals. Station S08 was used as the shoreline weather station for observations of air and water temperature, weather conditions, wind speed and direction, wave height, and sea conditions. Observations of rubber and plastic goods are included herein.

Quality assurance and quality control procedures were conducted to confirm the validity of the analytical data collected. All areas impacting reported data were subjected to standard microbiological quality control procedures in accordance with Standard Methods (APHA 1998). These areas include sampling techniques, sample storage and holding time, facilities, personnel, equipment, supplies, media, and analytical test procedures. Duplicate analyses also were performed on ten percent of all samples. When quality control results were not within acceptable limits, corrective action was taken. This quality assurance program helped ensure the production of uniformly high quality and defensible data. In addition, EMD participates annually in the performance evaluation program managed by the California State Department of Public Health (CSDPH) as part of its Environmental Laboratory Accreditation Program (ELAP); CSDPH biennially certifies EMD.

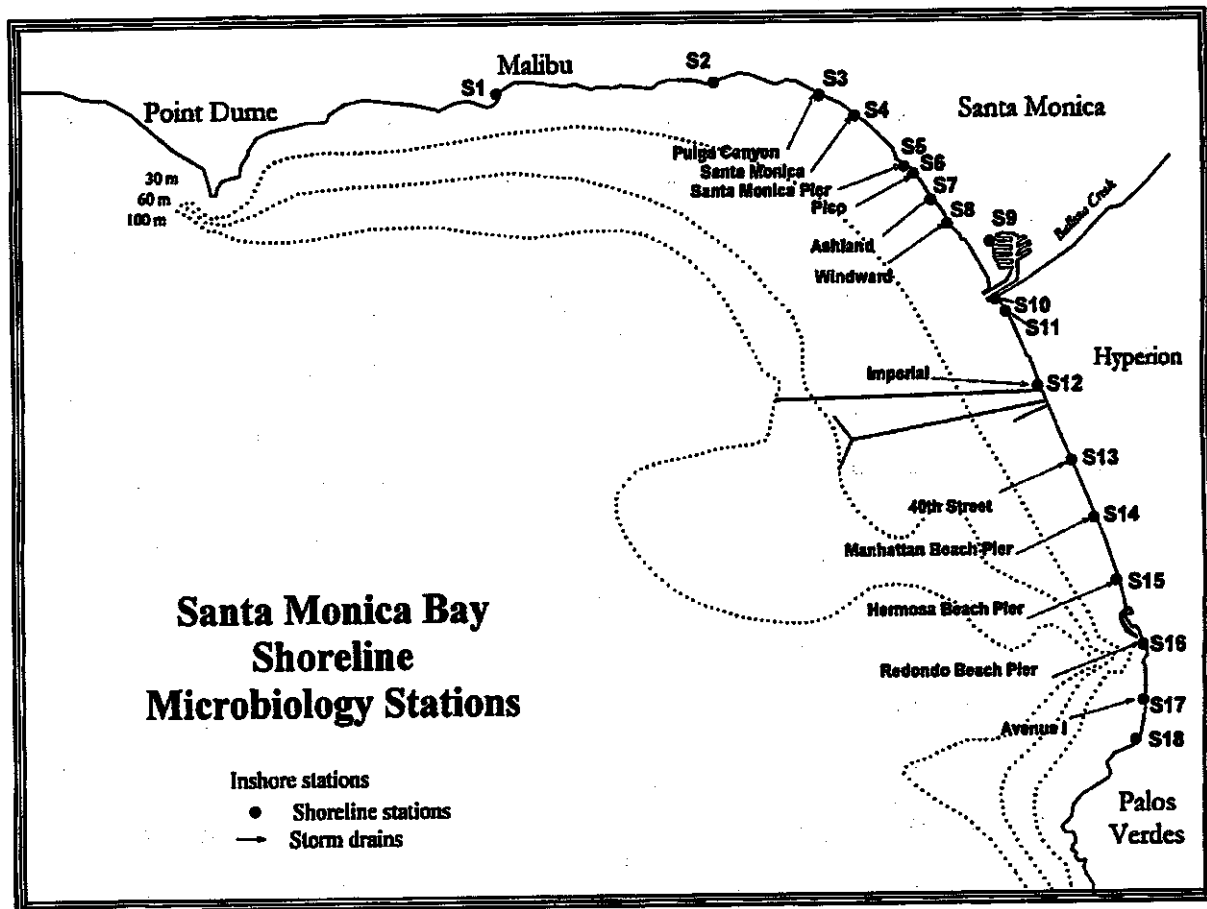


Figure 1. Location of Santa Monica Bay shoreline monitoring stations, storm drains, and piers.

C. DATA ANALYSIS

The results obtained from microbiological samples do not generally follow a normal distribution. To compensate for a skewed distribution and to obtain a nearly normal distribution, data must be log-normalized prior to analysis. Geometric means are the best estimate of central tendency for log-normalized data and were calculated for each bacterial indicator group. Annual geometric means were calculated for all shoreline sampling sites.

Shoreline data were divided into periods of wet and dry weather to examine the effects of runoff from storm drains on indicator bacterial concentrations. The MS4 permit has defined wet weather as the day of rain plus three days following the rain event. Rain data were obtained from the National Weather Service's Downtown Los Angeles, University of Southern California (USC) records.

III. RESULTS

Rainfall

Measurable rainfall was recorded during Fiscal Year 2007-2008 for a total 13.52 inches, substantially greater than the total rainfall, 3.2 inches, for the Fiscal Year 2006-2007. The majority of this total, approximately 8 inches, was recorded in January 2008. No rain was recorded for July and August 2007, very little was recorded in May 2008 (0.11 inches), and no rain to trace amounts was detected in March, April, and June 2008 (Figure 2).

Monthly Rainfall
(FY 2007-2008 Total Rainfall: 13.52 In.)

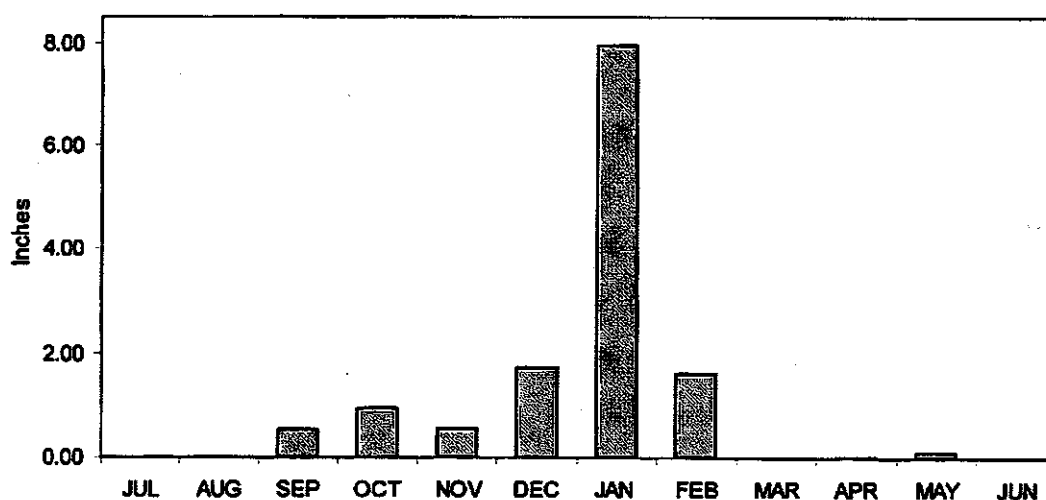


Figure 2. Monthly rainfall amounts at Downtown Los Angeles, USC, July 2007-June 2008.

Shoreline Stations

Annual geometric means for Fiscal Year 2007-2008 revealed higher bacterial densities for all three fecal indicator bacteria during the wet-weather periods compared to dry-weather periods for Santa Monica Bay monitoring stations (Figure 3). One notable exception was the geometric mean for *E. coli* at station S5 (Santa Monica Pier), it was higher during dry-weather than wet-weather. Total coliform and enterococcus densities were higher at S5 during wet-weather.

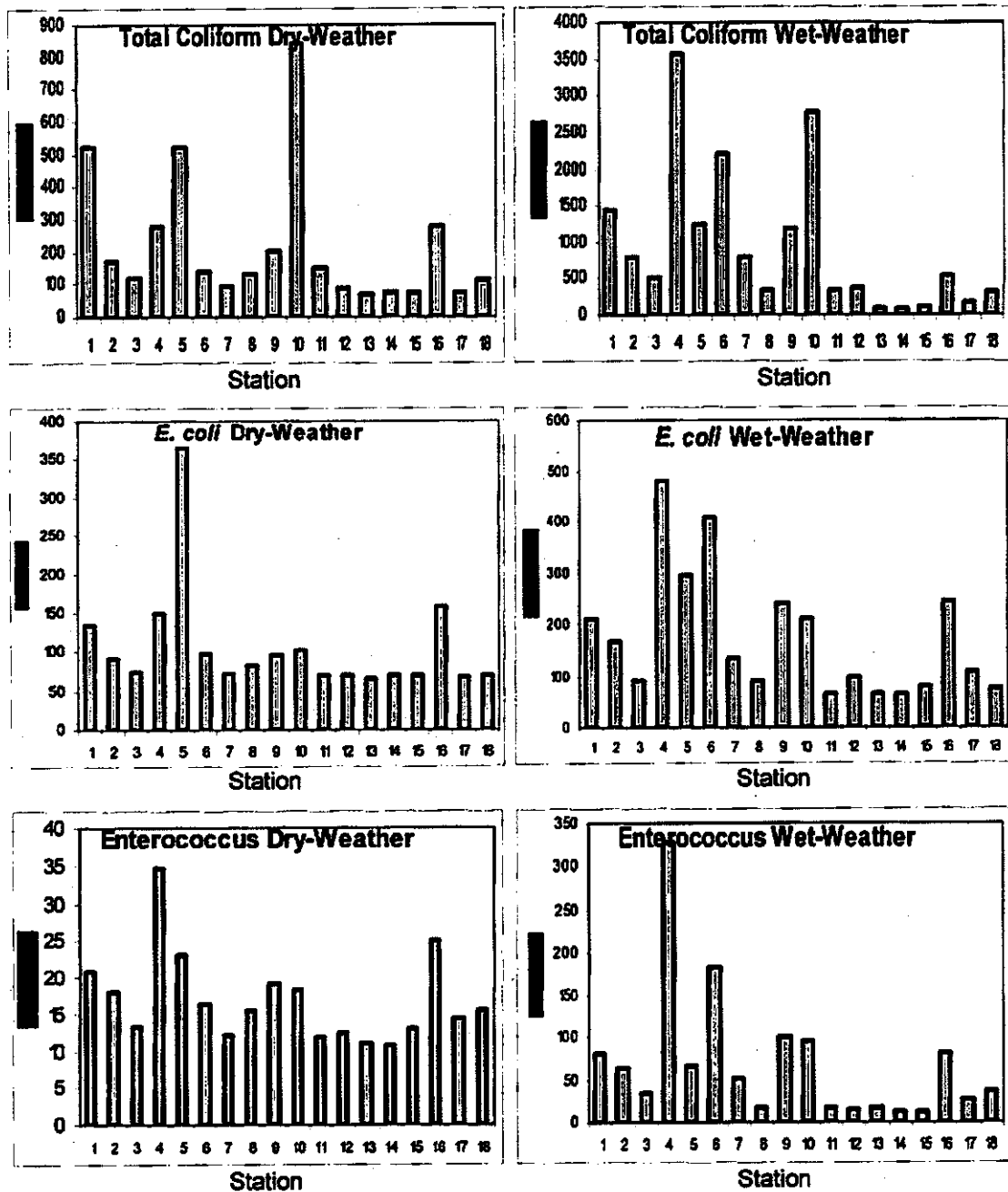


Figure 3. Annual dry- and wet-weather geometric means for fecal indicator bacteria at each compliance monitoring station in Santa Monica Bay for the 2007-2008 Fiscal Year.

The 18 compliance monitoring stations, S1-S18, in Santa Monica Bay are divided into northern stations, from S1 (Malibu Lagoon) in Malibu to S9 (Mother's Beach) in Marina Del Rey, and southern stations, S10 (Ballona Creek) to S18 (Malaga Cove) in Palos Verdes Estates. Stations S1, S4 (Santa Monica Storm Drain), and S5 (Santa Monica Pier) were the northern stations with the highest geometric means for all indicators during dry-weather. During wet-weather, the

northern stations with the highest bacterial densities for the three indicators were S4 and S6 (Pico-Kenter Storm Drain). During wet-weather, S9 was high for *E. coli* and enterococcus and S5 for *E. coli*.

The monitoring stations in the southern bay with the highest bacterial densities for all indicator bacteria during both dry- and wet-weather periods were S10 and S16 (Redondo Beach Pier). The remaining stations in the south had relatively lower densities.

Water Quality Standards Compliance

The purpose of collecting shoreline samples and reporting bacterial results is to assess water quality and the impact it may have on public health. Percent compliance for all AB411 bathing water quality standards for Santa Monica Bay shoreline stations are listed Table 2. Percent compliance represents the percentage of samples that met each of the four water quality standards listed in AB411. Monitoring stations S4, S5, S1, S16 and S10 had the lowest percent compliance for water quality standards.

Station	Number Of samples	(1)total coliform	(2) <i>E. coli</i>	(3)enterococcus	(4)EC:TC Ratio
S01	224	90	81	93	84
S02	224	100	94	89	93
S03*	46	100	98	98	98
S04*	225	97	77	71	76
S05*	225	98	50	92	72
S06*	225	97	94	92	96
S07*	225	99	99	98	99
S08*	48	96	94	98	98
S09	224	100	95	92	95
S10	225	85	92	94	95
S11*	44	100	100	100	100
S12*	45	100	100	96	100
S13	44	100	100	100	100
S14	44	100	100	100	100
S15	44	100	100	100	100
S16	225	99	81	87	88
S17*	45	100	100	98	100
S18	44	100	100	95	98

(1) total coliform 10,000 MPN/100mL

(2) fecal coliform 400 MPN/100mL

(3) enterococcus 104 MPN/100mL

(4) total coliform 1000 MPN/100mL, if the ratio of fecal-total coliform exceeds 0.1

(*) These locations are equipped with Low-Flow Diversion devices implemented by the City of Los Angeles, City of Santa Monica, and County of Los Angeles.

Table 2. Percent compliance of bacterial densities at EMD Santa Monica Bay Shoreline stations with California AB411 bathing water standards during dry weather (includes summer and winter dry seasons) from July 2007 to June 2008 (Samples less than 90% compliance are in bold).

The two stations with lowest compliance, S4 and S5, are located in northern Santa Monica Bay. No stations in the northern bay met 100% compliance for the four water quality standards listed by AB411. Three northern stations, however, did have very high percent compliance, stations S3, S7, and S8. Four southern bay stations, S11, S13, S14, and S15 met 100% compliance for all standards. Although they did not meet complete compliance, stations S12, S17, and S18 had very high percent compliance.

Table 3 lists the number of exceedances of AB411 standards during both summer and winter dry-weather for Fiscal Year 2007-2008. The highest total number of exceedances was for *E. coli* limits followed by the fecal:total coliform ratio and enterococcus limits; total coliform exceedances were the fewest of the four limits. Station S5 at Santa Monica Pier had 4 exceedances for total coliforms which translates to 98% compliance; however, *E. coli* limits for S5 were exceeded 113 times, a value that represents 50% compliance for this limit.

Station	S01	S02	S03*	S04*	S05*	S06*	S07*	S08*	S09	S10	S11*	S12*	S13	S14	S15	S16	S17*	S18
TC Exceedances	23	1	0	7	4	7	2	2	1	33	0	0	0	0	0	3	0	0
EC Exceedances	43	14	1	51	113	13	2	3	12	19	0	0	0	0	0	42	0	0
ENT Exceedances	15	24	1	65	19	19	4	1	17	14	0	2	0	0	0	30	1	2
EC/TC Exceedances	35	16	1	54	63	8	2	1	12	12	0	0	0	0	0	26	0	1
Total Exceedances	116	55	3	177	199	47	10	7	42	78	0	2	0	0	0	101	1	3

Table 3. Number of dry-weather (includes summer and winter dry seasons) exceedances of AB411 standards at SMB shoreline stations from July 2007 to June 2008.

(*) These locations are equipped with Low-Flow Diversion devices implemented by the City of Los Angeles, City of Santa Monica, and County of Los Angeles.

Field Observations

Field observations are recorded for each sampling location which include the presence of materials of sewage origin (MOSOs) and non-sewage origin, any unusual odors of sewage and non-sewage origin, and the presence of flow and flow rate (visual rating only) from storm drains. Storm drain flow data and Low-Flow-Diversion operation is available upon request. Table 4 summarizes field observations of MOSOs, such as, plastic goods (tampon inserts), rubber goods (prophylactic rings), and grease particles during Fiscal Year 2007-2008. One observation of rubber goods was recorded at S10. Of the 18 monitoring stations, this was only one incidence of observed MOSO for the entire fiscal year in Santa Monica Bay.

Materials of Sewage Origin							
Station	PG*	RG*	GO*	Station	PG*	RG*	GO*
S01	0	0	0	S10	0	1	0
S02	0	0	0	S11	0	0	0
S03	0	0	0	S12	0	0	0
S04	0	0	0	S13	0	0	0
S05	0	0	0	S14	0	0	0
S06	0	0	0	S15	0	0	0
S07	0	0	0	S16	0	0	0
S08	0	0	0	S17	0	0	0
S09	0	0	0	S18	0	0	0

*Legend: PG=Plastic Goods; RG=Rubber Goods; GP=Grease Particles

Table 4. Number of visual observations of material of sewage origin at shoreline stations during Fiscal Year 2007-2008.

IV. DISCUSSION

Historic monitoring data of Santa Monica Bay has indicated that the wastewater discharge from the Hyperion Treatment Plant has no observable impact on water quality at CLA monitored shoreline stations. Annual geometric means for all three indicator bacteria during dry-weather (includes summer and winter dry periods) identify for the third straight year stations S1, S4, S5, S10, and S16 as having the highest bacterial densities of all MS4 monitoring stations. Bacterial data used to assess percent compliance and tabulate the number of instances AB411 water quality standards were exceeded also identify these five stations as the most contaminated.

The geographic locations of S1, S4, and S10 at the outlet of large sub-watersheds predispose these locations to greater non-point source bacterial loading. Station S1 is located at Surfrider Beach at the outlet of the Malibu Creek watershed and is mainly affected by flows from Malibu Lagoon. This watershed covers a wide area, approximately 105 square miles. There is considerable local activity at the beach, and the lagoon serves as a habitat for numerous bird species; an added source of bacteria at this monitoring site. Surfrider Beach has previously been identified as one of the most polluted beaches in Santa Monica Bay (CLA, EMD 2003). Station S4 is located on a beach with considerable local activity and at the outlet of a large sub-watershed, Santa Monica Canyon. Santa Monica Canyon, which is adjacent to the Santa Monica Mountains, contains horse corrals, a golf course, and some houses on septic systems. In addition, large numbers of birds have been observed to congregate at the beach. Station S10 is at the mouth of Ballona Creek, across from the Marina Del Rey channel, and inside the breakwater that protects both channels. Ballona Creek is the largest freshwater body to drain into the Bay. It is a channel with year-round flow and a drainage area equal to approximately 89 square miles. High bacteria concentrations from the creek may contribute to bacteria detected at S10.

Stations S5 and S16 are adjacent to heavily used piers, which are most likely significant contributors to the high bacterial counts measured at these stations. Santa Monica Pier (S5) houses several food concession stands, restroom and parking facilities, as well as a small marine aquarium, and attracts thousands of local visitors and tourists. Station S16, located near the far end of the southern portion of the Bay, is adjacent to the Redondo Beach Pier. This site is subject to bacterial contamination by way of the pier. This pier contains large restaurants, food concessions, restroom and parking facilities, and has a large visitor population.

The City and County of Los Angeles are both operating several storm water low-flow diversion structures to improve water quality. They both have a program geared toward increasing the number of dry-weather storm drain flows diverted to sanitary sewers. Water quality within the Santa Monica Bay has shown improvement in recent years due to the efforts of these Low-Flow Diversion Programs the City of Santa Monica's Urban Runoff Recycling Facility (SMURRF), and the efforts of other municipalities within the watershed in implementing several best management practices (BMPs). Plans to reduce storm water pollution and urban runoff, which include structural BMPs and educational programs geared toward the general public, businesses, and City employees, are projected to continue improving and protecting water quality along the Santa Monica Bay shoreline.

V. LITERATURE CITED

APHA. See American Public Health Association.

American Public Health Association. 1998. Standard methods for the examination of water and wastewater, 20th ed. American Public Health Association, Washington, DC, pp. 9-1 to 9-115.

CLA, EMD. See City of Los Angeles, Environmental Monitoring Division.

City of Los Angeles, Environmental Monitoring Division. 2003. Marine Monitoring in Santa Monica Bay: Biennial Assessment Report for the Period of January 2001 through December 2002. Report submitted to EPA and RWQCB (Los Angeles). Department of Public Works, Bureau of Sanitation, Hyperion Treatment Plant, Playa del Rey, California, pp. 1-1 to 8-37 + appendices.

City of Los Angeles, Environmental Monitoring Division. 2005. Marine Monitoring in Santa Monica Bay: Biennial Assessment Report for the Period of January 2003 through December 2004. Report submitted to EPA and RWQCB (Los Angeles). Department of Public Works, Bureau of Sanitation, Hyperion Treatment Plant, Playa del Rey, California, pp. 1-1 to 8-37 + appendices.

Csuros, M and C. Csuros. 1999. Microbiological examination of water and wastewater. CRC Press, Boca Raton, Florida, 360 pp.

EXHIBIT G

*Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice*

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FILED
LOS ANGELES SUPERIOR COURT

MAR 24 2005

JOHN A. CLARKE, CLERK
BY E. SABALDORO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL CIVIL WEST COURTHOUSE

In Re LOS ANGELES COUNTY
MUNICIPAL STORM WATER PERMIT
LITIGATION

Lead Case No. BS 080548
Related Cases: BS 080753, BS 080758 BS
080791, BS 080792, and 080807
Judge: Hon. Victoria Gerrard Chaney

STATEMENT OF DECISION FROM
PHASE I TRIAL ON PETITIONS FOR
WRIT OF MANDATE

Statement of Decision from Phase I Trial
Hearing: January 7, 2005
Ruling: March 16, 2005
Department: 324-Central Civil West
Date Actions Filed: January 15 & 17, 2003

On May 19-20, 2004, trial was held on Phase I of this bifurcated action, known as *In the Matter of the Los Angeles County Municipal Stormwater Permit*, which involves five coordinated Petitions for Writ of Mandate filed by Petitioners County of Los Angeles and the Los Angeles County Flood Control District (County Petitioners); Petitioners the Cities of Arcadia, Baldwin Park, Bell Gardens, Bellflower, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Irwindale, Lawndale, Montebello, Paramount, Pico Rivera, Pomona, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Temple City, Vernon, Walnut, West Covina, Whittier, Building Industry Legal Defense Foundation, and Construction Industry Coalition on Water Quality

1 (Arcadia Petitioners); Petitioners Cities of Monrovia, Norwalk, Rancho Palos Verdes, Artesia,
2 Beverly Hills, Carson, La Mirada, Westlake Village, Agoura Hills, Hidden Hills, San Fernando,
3 and San Marino (Monrovia Petitioners); Petitioner City of Alhambra (Alhambra); and Petitioners
4 Los Angeles County Economic Development Corporation and the Cities of Industry, Lakewood,
5 Santa Clarita and Torrance (LAEDC Petitioners) against the Regional Water Quality Control
6 Board, Los Angeles Region (Regional Board). The Natural Resources Defense Council, Santa
7 Monica Baykeeper, and Heal the Bay (Intervenors) intervened as Respondents in Intervention in
8 support of the Permit.

9 After full briefing and oral argument, the Court, the Honorable Victoria Gerrard Chaney
10 presiding, issues the following Statement of Decision on the Phase I issues. All parties were
11 present and represented by counsel. Howard Gest appeared on behalf of the County Petitioners;
12 Rufus C. Young and Amy Morgan appeared for the Alhambra and LAEDC Petitioners; Richard
13 Montevideo and Peter Howell appeared for the Arcadia Petitioners; John J. Harris and Evan J.
14 McGinley appeared for the Monrovia Petitioners; Jennifer Novak and Helen Arens, Deputy
15 Attorneys General appeared for the Regional Board; David Beckman, Anjali Jaiswal and Leslie
16 Mintz appeared for the Intervenors. This Statement of Decision applies only to the Phase I
17 issues presented to this Court. All remaining issues are addressed in the Phase II Statement of
18 Decision.

19 Phase I of this bifurcated proceeding involved the following issues, as framed in the Joint
20 Statement Regarding Briefing and Hearing Schedule, filed on March 2, 2004:

- 21 1. Petitioners' allegations that Part 2 of the Permit ("Receiving Water Limitations") is
22 ambiguous, arbitrary, unsupported by the Record, and contrary to the "good faith" safe
23 harbor intentions of the Respondent and renders compliance with the Permit impossible
24 and impracticable;
- 25 2. Petitioners' allegations that the Permit exceeds the Respondent's authority under
26 the federal Clean Water Act and California's Porter-Cologne Water Quality Act by
27 imposing requirements that go beyond the Clean Water Act's "maximum extent
28

1 practicable" ("MEP") standard and/or the Porter-Cologne Act's "reasonably achievable"
2 standard;

3 3. Certain Petitioners' allegations that the Permit unlawfully regulates discharges
4 "into", as opposed to only "from", the municipal separate storm sewer system contrary to
5 the Clean Water Act and without authority under the Porter-Cologne Act;

6 4. Petitioners' allegations that Respondent acted without authority by adopting
7 Permit terms that unlawfully direct Petitioners to modify their General Plans and/or their
8 CEQA guidelines, and that unlawfully compel Petitioners to review development projects
9 in a manner that is contrary to or different from the process provided for by the California
10 Legislature, with Respondent violating the Separation of Powers doctrine under the
11 California Constitution;

12 5. Certain Petitioners' allegations that the Permit unlawfully interferes with their
13 land use authority; and

14 6. Petitioners' allegations that the Permit was adopted in violation of CEQA, as
15 Respondent failed to comply with the environmental review requirements of CEQA. (To
16 what extent was the Respondent required to comply with CEQA in adopting the Permit
17 and did the Respondent so comply.)

18
19 **Holding**

20 With some caveats, the Court denies the petitions for writ of mandate as they relate to the
21 Phase I issues.

22 To obtain a writ of mandate under Code of Civil Procedure section 1094.5, Petitioners
23 must prove that Respondent, the Regional Board: 1) proceeded without or in excess of
24 jurisdiction; 2) issued its Permit without first holding a fair hearing; or 3) prejudicially abused its
25 discretion. Abuse of discretion is established if the Respondent: a) has not proceeded in a
26 manner required by law; b) the Permit is not supported by findings; or c) the findings are not
27 supported by the evidence.

1 Petitioners failed to demonstrate that Respondent exceeded its jurisdiction.

2 Petitioners do not appear to argue that the Permit was issued without a fair hearing. If
3 this argument were made, 80,000 pages of the administrative record ("the Record") and
4 approximately 50 meetings between Regional Board staff and interested parties would confute
5 the argument.

6 Neither have Petitioners demonstrated that Respondent failed to proceed in a manner
7 required by law, that the Permit is unsupported by the findings, or that the findings are
8 unsupported by the evidence. Therefore, the Court finds no prejudicial abuse of discretion.

9
10 **Permit Part 2: Receiving Water Limitations**

11 Petitioners assert several arguments with respect to Part 2 of the Permit, Receiving
12 Waters Limitations. In particular, Petitioners assert that subparts 2.1, 2.2, 2.3, and 2.4 of Part 2
13 create ambiguity, that Part 2 must include a "safe harbor" provision, and that the Permit,
14 including Part 2, unlawfully exceeds the MEP standard.

15 The Permit cannot be read in a vacuum. In interpreting the Permit the Court looks to the
16 content of Part 2, other language and provisions in the Permit, other related statutes and
17 regulations, and the technical and specialized nature of NPDES permits together with the
18 expertise of those who implement them. (See *Department of Alcoholic Beverage Control v.*
19 *Alcoholic Beverage Control Appeals Bd.* (2003) 109 Cal.App.4th 1687, 1696; see also *Northwest*
20 *Environmental Advocates v. Portland* (9th Cir. 1995) 56 F.3d 979, 982; *United States v.*
21 *Weitzenhoff* (9th Cir. 1994) 35 F.3d 1275, 1289.)

22 The terms of the Permit are governed by 33 U.S.C. section 1342, subdivision (p)(3)(B) of
23 the Clean Water Act, which includes the "requirement to effectively prohibit non-stormwater
24 discharges into the storm sewers"; the Maximum Extent Practicable standard¹; and the separate
25

26 ¹ See Permit at 57 citing (*In the Matter of the Petitions of the Cities of Bellflower et al.* (Oct. 5,
27 2000) SWRCB WQ 2000-11 at 20 (R007511); see Memorandum from Elizabeth Miller
28 Jennings, Senior Staff Counsel, SWRCB, *Definition of Maximum Extent Practicable* (Feb. 11,
1993) at 3 (R0028353); 40 C.F.R. §122.26(d)(2)(iv); *NRDC v. Costle* (D.C. Cir. 1977) 568 F.2d
1369, 1375; *NRDC v. U.S. EPA* (9th Cir. 1992) 966 F.2d 1292, 1296, 1308; *Browner* 191 F.3d at

1 authority of the Regional Board to require "such other provisions" necessary to meet water
2 quality standards. The Permit is governed also by the Porter-Cologne Act section 13263, to the
3 extent it is not inconsistent with federal law; and Part 2 should be interpreted in light of the
4 findings of experts, including the Regional Board,² precedential orders,³ and related Clean Water
5 Act provisions, such as those that provide for the adoption of TMDLs.⁴

6
7 Pursuant to these authorities and guides, the Court rejects Petitioners' assertion that the
8 MEP standard is the sole standard that applies to municipal storm water discharges and their
9 related contention that MEP is a substantive upper limit on requirements that can be imposed to
10 meet water quality standards. In *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159
11 (*Defenders of Wildlife*), the Ninth Circuit noted: "Under that discretionary provision [of Section
12 402(p)(3)(B)], the EPA has the authority to determine that ensuring strict compliance with state
13 water-quality standards is necessary to control pollutants. The EPA also has the authority to
14 require less than strict compliance with state water-quality standards." (191 F.3d at p. 1166.)
15 The Regional Board, which is authorized to enforce the Clean Water Act pursuant to Water Code

16 1168-67 (permitting authority's broad discretion to specify BMPs and determine whether MEP is
17 satisfied).

18 ² See, e.g., Long Beach Municipal Stormwater Permit (Los Angeles RWQCB Order 99-060 at 6-
19 7 (R0008599-600); Ventura County Municipal Stormwater Permit (Los Angeles RWQCB Order
20 00-108) at 9 (R0008753); Caltrans Stormwater Permit (State Board 99-06) at 10-11 (R0003225);
21 Ltr from Alexis Strauss, Acting Director, Division of Water, EPA Region IX (Mar. 17, 1998) at
2 2 (R0008582); 61 Fed.Reg. 43,761 *EPA Interim Permitting Approach*; Memorandum from
Michael A.M. Lauffer, Staff Counsel, SWRCB, *Legal Issues Concerning Renewal of Order 96-
054* (Nov. 9, 2001) at 12 (R0007374); Memorandum from Regional Board Staff for Nov. 29,
2001 Meeting at A.9-A.10 (R0006796-97).

22 ³ See, e.g., *Own Motion Review of the Petition of Environmental Health Coalition SWRCB WQ*
23 *98-01* at 5 (R0001973) amended by *Own Motion Review of the Petition of Environmental Health*
24 *Coalition SWRCB WQ 99-05* at 1-2 (R0001965-66) ("as a precedent decision, the following
25 receiving water limitation language shall be included in future municipal storm water permits"
26 without a safe harbor) (R0001965-66); *In the Matter of the Petitions of BIA*, SWRCB WQ 2001-
15 at 5-7 (R0007530-32); see also *In the Matter of the Petition of Citizens for a Better*
Environment, et al. SWRCB order 91-03 at 36 (R0066466).

27 ⁴ See Fact Sheet 14-15 (R0008047-48); 40 C.F.R. § 122.44(a)(1) (TMDL implementation in
28 stormwater management plans), 40 C.F.R. § 130.6(c)(1); Cal. Water Code § 13263.

1 sections 13370 and 13377, can also require compliance with water quality standards. (See
2 *Building Industry Association of San Diego County v. State Water Resources Control Board*
3 (2004) 124 Cal. App. 4th 866 (*Building Industry Association*) [rejecting the claim that the MEP
4 standard is the exclusive measure that may be applied to municipal storm sewer discharges].)

5 It seems clear that the Regional Board followed these principles when it established
6 subparts 2.1 and 2.2 as the basic receiving water requirements for Los Angeles area waters and
7 subparts 2.3 and 2.4 as the procedure the Board intends to implement to resolve any violations
8 those requirements. (See *Building Industry Association, supra*, 124 Cal.App.4th at p. 890
9 [“Although the Permit allows the regulatory agencies to enforce the water quality standards
10 during this process, the Water Boards have made clear in this litigation that they envision the
11 ongoing iterative process as the centerpiece to achieving water quality standards.”]; see generally
12 *Defenders of Wildlife, supra*, 191 F.3d 1159; *NRDC v. Costle* (D.C. Cir. 1977) 568 F.2d 1369,
13 1375; *NRDC v. U.S. EPA* (9th Cir. 1992) 966 F.2d 1292, 1296, 1308.)

14 Under this process, the first step to correct water quality violations that occur, even if a
15 permittees’ SQMP has been designed to achieve standards and BMPs have been timely
16 implemented, is set forth in subpart 2.3, the “iterative” process. Should that not be sufficient, the
17 parties would move to subpart 2.4, Best Management Practices (BMP) requirements. The
18 process requires cooperation from the Regional Board, State Board and local government entities
19 and impliedly requires that all parties work together in good faith.

20 This reading is consistent with the requirements of the Clean Water Act generally and
21 section 402 specifically, as well as the Porter-Cologne Act. (See 33 U.S.C. § 1342(p)(3)(B)(iii);
22 33 U.S.C. §§ 1341(a)(1)-(2), 1342(a)(2), 1342(p)(3)(B)(ii); 40 C.F.R. 122.4(d); Cal. Water Code
23 §§ 13000, 13263(a).) It is also consistent with State Board orders WQ 2001-15 and WQ 99-05
24 and the Francine Diamond letter, found at Exhibit B to Petitioners’ Request for Judicial Notice.

25 Reading the Receiving Waters Limitations language in this manner, there is no tension
26 between the subparts and no ambiguity.

1 Petitioners assert that the Regional Board was required under the Porter-Cologne Act and
2 CEQA to consider certain factors when issuing the Permit, including economics, reasonably
3 achievable water quality conditions, potential and environmental impacts, alternatives to the
4 proposed requirements and mitigation measures for any requirements adopted. In a later section
5 of this Statement of Decision and in the Statement of Decision from Phase II of trial the Court
6 rejects these arguments but finds that in any event the Regional Board met any such obligations
7 by considering these factors in addressing the MEP standard. In addition, where applicable, the
8 Total Maximum Daily Load (TMDL) procedures allow for correction of water quality problems
9 in a graded manner over a period of years. The TMDL procedures provide some protection from
10 unreasonable enforcement by the Regional Board.

11 In sum, the Regional Board acted within its authority when it included Parts 2.1 and 2.2
12 in the Permit without a "safe harbor," whether or not compliance therewith requires efforts that
13 exceed the "MEP" standard. (*Defenders of Wildlife*, supra, 191 F.3d 1159; *Building Industry*
14 *Association* 124 Cal. App. 4th at p. 884.) In so concluding, the Court gives deference to State
15 Board order 99-05, a precedential decision under Government Code section 11425.60, and notes
16 the EPA's objection to specific safe harbor language. (See *Own Motion Review of the Petition of*
17 *Environmental Health Coalition SWRCB WQ 99-05* at 1-2 (R0001965-66); see also Letter from
18 Alexis Strauss, Acting Director, Division of Water, EPA Region IX (Mar. 17, 1998) at 2
19 (R0008582).) The Court emphasizes the importance of good faith on the part of all parties in
20 implementing Part 2.

21
22 **Maximum Extent Practicable Standard**

23 Further, Petitioners assert that the Permit cannot go beyond the maximum extent
24 practicable ("MEP") standard under the Clean Water Act and this Permit is inconsistent with the
25 MEP standard. As noted, even if the Permit did exceed the MEP standard, the Regional Board
26 was within its authority in requiring more stringent standards. However, the Court finds that the
27 administrative record contains significant evidence showing that the terms of the Permit taken, as
28

1 a whole, constitute the Regional Board's definition of MEP, including, but not limited to, the
2 challenged Permit provisions. There is significant evidence in the administrative record that the
3 Regional Board looked to both other states and jurisdictions, and conducted its own independent
4 studies regarding various methods for compliance with MEP.⁵ This Court specifically finds that
5 the Regional Board conducted considerable research and review to ensure that the best
6 management practices ("BMPs") were available and reasonable.⁶ For example, the
7 administrative record contains *The Fundamentals of Urban Runoff Management: Technical and*
8 *Institutional Issues*, which demonstrated an effective and available method for removing
9

10
11 ⁵ See, e.g., Permit at 14 (development and redevelopment activities); Permit at 18
12 (implementation of all BMPs in SQMP); Final Fact Sheet/Staff Report (Dec. 13, 2001) ("Fact
13 Sheet") at 15-17 (public education and participation) (R0008048-50); Fact Sheet at 19-25
14 (industrial/commercial program and inspections) (R0008052-58); Fact Sheet at 38-40 (public
15 agency activity) (R0008071-73); Fact Sheet at 40-45 (development and redevelopment activity)
16 (R0008073-78); Long Beach Municipal Stormwater Permit (Los Angeles RWQCB Order 99-060
17 (R0008599-600); Ventura County Municipal Stormwater Permit (Los Angeles RWQCB Order
18 00-108) (R0008753); Caltrans Stormwater Permit (State Board 99-06) at 10-11
19 (R0003225). Comparison of Permit with Orange County and Santa Clara Permit (R0031402);
20 Orange County Permit Proposed Monitoring Program (R0054938); Riverside Permit (R0055287-
21 88); Denver Urban Stormwater Drainage Manual (R0056744-46); San Francisco BMPs
22 (R0057414); Watershed Ordinance for Austin, TX (R0058074); Orange County DAMP
23 (R0058399); San Bernardino Permit (R0061460); Ventura Permit (R0061493); Fresno Permit
24 (R0061511); Sacramento Permit (R0061585); San Francisco Bay Area Permit (R0061636);
25 Santa Cruz Region Permit (R0061652); Sarasota Permit (R0061666); Tulsa Permit (R0061773);
26 Anchorage Permit (R0061805) (New York State Stormwater Management Design Manual
27 (R0009514); Virginia Stormwater Management Manual (R0009529).

28
29 ⁶ See, e.g., Allison, Robin, Effectiveness of Two Storm Water Trash Trapping Systems
30 (R0068962-63); Leecaster, Molly K., Assessment of Efficient Sampling Designs for Urban
31 Stormwater Monitoring (R0022854-60); Radulescu, Dan, Storm Water Quality Task Force BMP
32 Guide for Retail Gasoline Outlets (Nov. 2001) (R0007546-50); Radulescu, Dan, Retail Gasoline
33 Outlets: New Development Design Standards for Mitigation of Storm Water Impacts (Dec.
34 2001) (R0007598-607); Dallman, Suzanne, Storm Water: Asset not Liability (Dec. 3, 1999)
35 (R0068878-913); Pitt, Robert, Illicit Discharge Detection and Elimination (May 2001)
36 (R0011273); Swamikannu, Xavier, SUSMPs Presentation to the Regional Board (Jan. 26, 2000)
37 (R0068726-40); Othmer, Edward F., Performance Evaluation of Structural BMPs: Drain Inlet
38 Inserts (R0007566-78); Los Angeles County Requirements, Section Three (R0068875-77);
39 Schueler, Thomas R., Better Site Design: Changing Development Rules to Protect the
40 Environment (1999) (R0068693-95); A Guide to Better Site Planning (R0068868-73); Urban
41 Runoff: New Development Management Measure (R0068713-22); Ferguson, Bruce K.,
42 Stormwater Infiltration (R0068914-15); Horner, Richard R., Fundamentals of Urban Runoff
43 Management: Technical and Institutional Issues (Aug. 1994) (R0068930-61); Ltr from NRDC to
44 Regional Board re: SUSMPs (Jan. 14, 2000) (R0068840-61).

1 pollutants. (Horner, R., *Fundamentals of Urban Runoff Management: Technical and*
2 *Institutional Issues* (Aug. 1994) (R0068930).) The administrative record also shows that the
3 Regional Board considered State Board order 2000-11, which held that the Standard Urban
4 Stormwater Mitigation Plans ("SUSMPs") "are consistent with MEP and therefore are federally
5 mandated." (*In Re Cities of Bellflower, et al.* (2000) SWRCB Order 2000-11 (R0007506).)
6 Additional challenges to the SUSMPs are rejected in the Statement of Decision from Phase II of
7 trial in deciding Issue 6.

9 The Court finds that there was no issue of impossibility. The administrative record
10 demonstrates that there are (1) BMPs available to meet the terms of the Permit consistent with
11 the MEP standard, and (2) that those BMPs are reasonable. The administrative record supports
12 the conclusion that the research and review were conducted by the Respondent.⁷

14 This Court finds based on the administrative record that the Regional Board made
15 considerable findings regarding (1) the positive effects of storm water management and (2) the
16 cost of potential programs and BMPs. (See e.g. Permit at 2-4, 8-10, 12-14; Fact Sheet at 3-7
17 (R0008036-40).) The Regional Board considered the history of implementation costs, both in
18 prior permits for Petitioners and costs in other states.⁸

20 ⁷ See *supra* notes 7 and 8; see also Addendum (consideration of EPA documents).

21 ⁸ See, e.g., Yamaguchi, Marianne, *Comparative Cost of the LA County Storm Water*
22 *Management Program* (June 10, 1996) (R0031426-30; R0031431-44); Regional Board, Slide
23 *Presentation of MS4 Permit* (Dec. 13, 2001) (R0007660); SUSMPs, *BMP Cost Estimates* (Nov.
24 30, 1999) (R0068731-33); Santa Monica Bay Tourism and Recreational Beach Use (1994)
25 (R0031447); Los Angeles 1998 Economic and Demographic Info. (1998) (R0010984-85);
26 *Permit Costs, City of Manhattan Beach* (June 17, 1996) (R0031445); U.S. EPA, *Economic*
27 *Benefits of Runoff Controls* (Sept. 1995) (R0010711-12); U.S. EPA, *Data Summary of Urban*
28 *Stormwater Best Management Practices* (Aug. 1999) (R0010735-36); *Cost and Benefits of Storm*
Water BMPs (Sept. 14, 1998) (R0073087-135); U.S. EPA, *Economic Analysis of the Storm*
Water Phase II Rule (Aug. 1, 1997) (R0010281-82); U.S. EPA, *Liquid Assets: A Summertime*
Perspective on the Importance of Clean Water to the Nation's Economy (May 1996)
(R0066961); *The Role of Metropolitan Areas in the National Economy* (R0011017); *The*
Benefits of Better Site Design in Commercial Development (R0011499-508); Billingsley, Janice,
Study Nails Building Costs (Sept. 4, 2000) (R0010703); U.S. Dept. of Commerce, *Economic*
Valuation of Natural Resources: A Handbook for Coastal Resource Policymakers (June 1995)

1 **CEQA Compliance**

2 Several Petitioners assert that the Court should invalidate the action of the Regional
3 Board on the grounds that the Regional Board failed to comply with the California
4 Environmental Quality Act (CEQA), and failed to conduct the necessary environmental review
5 required by CEQA. They acknowledge that in issuing a National Pollutant Discharge
6 Elimination System (NPDES) permit, the Regional Board is exempt from complying with
7 CEQA's requirement to prepare Environmental Impact Reports or negative declarations. (See
8 Wat. Code, § 13389; Cal. Code of Regs., Title 14, § 15263; *Committee for a Progressive Gilroy*
9 *v. State Water Resources Control Board* (1987) 192 Cal.App.3d 847, 862.) Petitioners allege
10 that the Regional Board was to comply with the "policy" requirements of CEQA, pointing to
11 Public Resources Code sections 21000 and 21001.
12

13
14 The Court rejects the argument that the Regional Board violated CEQA. The Court
15 agrees with the Regional Board that the issuance of the subject Permit was exempt from all
16 aspects of CEQA. The Court acknowledges the State Board's finding that complying with
17 CEQA's "policy" provisions means that in adopting the Permit, the Regional Board should
18 consider any environmental reports or similar documents submitted during the adoption process.
19 (See State Board Orders WQ 75-8 & 84-7, attached to Petitioners' Request for Judicial Notice as
20 Exhibits D & E.) This interpretation of CEQA is consistent with the Legislature's stated intent
21 that the environmental review documents contain the discussion of any adverse environmental
22 impacts, alternatives, mitigation possibilities, etc. (Pub. Resources Code, §§ 21002.1, 21003.1;
23

24
25 (R0042398); Griffin, Adrian, *Economic Issues in Water Quality Regulation* (R0010706-07); U.S.
26 Conference of Mayors, *U.S. Metro Economies: The Engines of America's Growth* (July 2001)
27 (R0010916, R0010918); Washington State Dept. of Transport. and Ecology, *Cost Analysis,*
28 *Washington Dept. of Ecology Year 2001* (Aug. 30, 2001) (R0010780); Virginia Dept. of
Conservation and Recreation, *The Economic Benefits of Protecting Virginia's Streams, Lakes,*
and Wetlands (Oct. 2001) (R0010880-85; R0010909-11).

1 cf. Cal. Code of Regs., title 14, § 15063.) CEQA requires public agencies to generate
2 sufficiently informative documents so that decisions are made with full consideration of the
3 environmental consequences. (*Laurel Heights Improvement Assn. v. Regents of University of*
4 *California* (1988) 47 Cal.3d 376, 392.) This makes the environmental impact report the "heart"
5 of CEQA, (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229 [citation omitted]).
6
7 Petitioners' arguments cannot be accepted because they would render the Regional Board's
8 exemption from this requirement illusory. Petitioners have not argued that the Regional Board
9 failed to consider existing environmental documents as provided in State Board orders 75-8 and
10 84-7. The Court finds that the Regional Board had before it and considered the necessary
11 information concerning the environment.

12
13 In addition, having found the Permit is consistent with the Clean Water Act with respect
14 to the MEP standard and other Phase I issues, the Court respectfully disagrees with Petitioners'
15 contention that the Permit goes "far beyond" the Clean Water Act's mandates. Also, a finding
16 that the Permit's adoption was not bound by these CEQA reporting requirements is consistent
17 with Congress' intent to streamline environmental regulation. (See 33 U.S.C. § 1371, subd. (c);
18 *Pacific Legal Foundation v. Quarles* (C.D. Cal. 1977) 440 F.Supp 316, 320-21 & fn. 2.) Under
19 the Porter-Cologne Act, a California-issued NPDES permit must be consistent with federal law
20 and intent. (See Wat. Code, §§ 13370, 13372; *Pacific Water Conditioning v. City Council of*
21 *Riverside* (1977) 73 Cal.App.3d 546, 556.)
22

23 The Court therefore finds that in adopting the Permit, the Regional Board did not act in a
24 manner that was contrary to law, outside the scope of its authority or without the support of the
25 weight of evidence in the record with respect to Petitioners' CEQA violation claim.
26
27
28

1 CEQA Amendment Claim

2 Turning next to Petitioners' claim that the Permit violates the separation of powers and
3 unlawfully "amends" the CEQA process, the Court finds that Petitioners have not met their
4 burden under section 1094.5. Petitioners' argument rests on the belief that CEQA occupies the
5 field of environmental review. Petitioners present no authority to demonstrate this alleged
6 legislative intent.
7

8 Public Resources Code section 21003 demonstrates that the Legislature intended CEQA
9 to be *an* environmental review process, not the *only* one. When more than one review occurs,
10 these should be coordinated as much as possible. The plain language of this statute supports this
11 reading. Given the powers vested in the Regional Board to implement water quality control and
12 coordination under the Porter-Cologne Act, the Regional Board can require additional
13 environmental reviews consistent with this authority and it can specify and require actions to
14 ameliorate the impacts of polluted runoff without offending CEQA. (See, e.g., Pub. Resources
15 Code, § 21174; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274.)
16

17 The Court also finds that the equitable doctrines of estoppel, laches and waiver apply
18 here. When applying for their 1996 permit, the permittees advised the Regional Board that much
19 of their storm water consideration could be "channeled" through the compliance effort of CEQA.
20 (R0060482.) They proposed coordination with their existing CEQA processes, finding that the
21 CEQA checklist to assess initial studies could also indirectly address potential impacts to storm
22 water, with additions to the form. (R0060482, 0060555, 0060629.) The 1996 permit therefore
23 included a requirement that permittees amend their CEQA review process to include storm water
24 considerations. (R0008514.) Indeed, it imposed a deadline of 1998 to develop CEQA guidelines
25 and 1999 to incorporate them into the permittees' internal procedures. (R008514, R008510.)
26
27
28

1 Yet none of these Petitioners availed themselves of the right to challenge this provision to
2 the State Board under Porter-Cologne Act section 13320. At argument, Petitioners represented
3 that they complied with the 1996 permit's requirements. In addition, when applying for the
4 subject Permit, they proposed that this provision be added to the Permit. (R0000032.) This
5 conduct is inconsistent with their current position. The equitable doctrines of waiver, laches and
6 estoppel can apply to municipalities. (See, e.g., *City of Los Angeles v. County of Los Angeles*
7 (1937) 9 Cal.2d 624, 628, 630; *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 820.) The
8 Court is satisfied under these facts that those doctrines apply here to bar Petitioners' claims on
9 this issue.
10

11
12 **General Plan Amendment Claim**
13

14 Along a similar vein, Petitioners argue that the Permit, specifically the sections on new
15 development and redevelopment and General Plans, constitutes land use planning, infringing
16 upon the municipalities' land use authority. The Court respectfully disagrees with the Alhambra
17 and LAEDC Petitioners and follows *California Coastal Commission v. Granite Rock* (1987) 480
18 U.S. 572 [107 S.Ct. 1419] holding that an environmental regulation is not a land use regulation.
19 The Court finds that these are environmental regulations that do not dictate the manner in which
20 the permittees are to use the land. Instead, while there may be some limitations, this court finds
21 these sections represent environmental regulations, not land use regulations. These regulations
22 are clearly for the greater good. The Permit itself notes that the Regional Board did not intend
23 the Permit to restrict or control local land use decision-making authority, but contemplated that
24 while permittees exercised that authority, they fulfilled Clean Water Act requirements to reduce
25 the discharge of pollutants from new development and redevelopment activities. (Permit, at p.
26 14.)
27
28

1 In addition, the cases which Petitioners cite regarding land use planning stand for the
2 general proposition that land use planning falls within the authority of local governments and
3 agencies. Yet even then, land use planning must be consistent with general laws. The California
4 Constitution Article 11 section 7 states that a county or city may not enact laws that conflict with
5 general laws. This position is further supported by the case of *City of Los Angeles v. State of*
6 *California* (1982) 138 Cal.App.3d 526, 532 for matters of statewide concern. The Porter-
7 Cologne Act contains the Legislature's finding that water quality is a matter of statewide
8 concern, requiring a statewide program administered at a regional level. (See, e.g., Wat. Code, §
9 13000; see also generally *Southern California Edison v. State Water Resources Control Board*
10 (1981) 116 Cal.App.3d 751, 758.) 33 U.S.C. section 1251 has a companion policy statement in
11 the Clean Water Act, where Congress found that water quality is a matter of federal concern.
12

13
14 In this connection, the Court disagrees with the Arcadia Petitioners that the Regional
15 Board cannot act on behalf of the State Board. The Porter-Cologne Act sections 13001 and
16 13225 clearly authorize a regional board to act on behalf of the State Board. Additionally, it
17 makes more sense to allow a regional board to act on behalf of the State Board because a
18 regional board would be more aware of the specific problems in its area/region of the state as
19 compared to the State Board. If permittees and other interested parties had to deal with one large
20 board, as opposed to larger regional boards, then there would not necessarily be specialists in the
21 particular problems of that region, such as clay soil, mountains or other unique features not
22 occurring in different regions. (e.g. Northern California, the farming communities, Central
23 California, and Los Angeles County metropolis are unique.) Allowing regional boards provides
24 greater efficiency by processing the permits more expeditiously by specialists in specific areas.
25

26 Porter-Cologne Act section 13001 gives the Water Board primary responsibility to
27 control and coordinate water quality, with a broad grant of authority. However, Porter-Cologne
28

1 Act section 13225 empowers the Regional Board with regional duties and obligations to prevent
2 and abate problems and set water policies which deal with water pollution and nuisances.

3 Porter-Cologne Act section 13240 allows for the adoption of plans by the Regional Board, which
4 clearly gives the Regional Board authority to act in this instance, and Porter-Cologne Act section
5 13002 gives the Regional Board authority over local government entities.
6

7 The Court also finds that the equitable doctrines of waiver, laches and estoppel do apply
8 to bar Petitioners' land use allegations. This finding is based on Petitioners' own actions and
9 proposals, as well as the 1996 permit. As early as 1995, the permittees submitted an application
10 for the 1996 permit in which they indicated that their General Plans were the legal "backbone"
11 for the planning process and all development approvals must be consistent with the policies,
12 objectives and principles set forth in the General Plan. They further offered: "Discussion of
13 stormwater issues in the General Plan could greatly enhance the awareness of the issues and
14 encourage full assessment of possible adverse impacts on stormwater quality as the result of new
15 and redevelopment." (R0060556.) The 1996 permit, at section 3(b) included a requirement that
16 each permittee include watershed and storm water management considerations whenever the
17 relevant portions of its General Plan were amended. (R0008514.) None of the parties before the
18 Court today challenged, either administratively or judicially, this requirement in the 1996 permit.
19
20

21 Petitioners argue that they were not required to challenge this provision in the 1996
22 permit but were entitled to simply tolerate it. However, as with the CEQA arguments, their
23 current position regarding land use are contradicted by the fact that when applying for the current
24 permit, they specifically requested inclusion of this provision. In their proposed permit, they
25 included a requirement similar to the one found in the 1996 permit and virtually identical to the
26 one that the Regional Board eventually included in the challenged Permit. (See R00000032,
27 Permit at p. 41.) Respondent and Intervenors have noted that prior permits and the permittees'
28

1 application for a permit serve as the basis for drafting and adopting a subsequent permit. In
2 drafting and adopting the subject Permit, the Regional Board considered and relied upon
3 programs implemented and proposed by the permittees. This series of events and actions satisfy
4 the Court that the equitable doctrines of waiver, estoppel and laches apply.
5

6
7 **Discharges "Into" and "From" the Storm Drain System**

8 The Court denies the petitions for writ of mandate with respect to the "into" versus
9 "from" argument. First, Respondent and Intervenors have demonstrated that the Clean Water
10 Act itself uses the words "in" or "into," not just "from." (See, e.g., 33 U.S.C. § 1342(p)(3)(B)(ii);
11 40 C.F.R. § 122.26(d)(1)(ii), 122.26(d)(1)(v)(B), 122.26(d)(2)(iv)(D), 122(d)(2)(iv)(B);
12 122.26(d)(1)(v), 122.26(d)(2)(iv)(A)(6), 122.26(d)(2)(iv)(A), 122.26(d)(2)(iv)(A)(2).)

13
14 Second, the Clean Water Act section 402(p)(3)(B)(ii) prohibits the discharge of non-
15 stormwater "into" storm sewers. (33 U.S.C. 1342(p)(3)(B)(ii).) The administrative record also
16 contains an admission by Petitioners that "the most effective way of dealing with stormwater
17 runoff is to deal with it at the source before it becomes a problem"—before it goes into the
18 system. (Ltr from Executive Advisory Committee (Aug. 6, 2001) (R0004878).) In addition,
19 State Board 2001-15, discusses the "into" versus "from" issue, stating, "It is important to
20 emphasize that dischargers into MS4s continue to be required to implement a full range of
21 BMPs, including source control." (*In re Building Industry Association of San Diego County, et*
22 *al.* (2001) SWRCB Order 2001-15 at 10 (R0007535).)

23
24 Third, although this Court recognizes that it may not always be possible to prevent
25 something from going into the system, it probably is the cheapest method. If something does not
26 go in, then there is no concern about it coming out the other end. If the contaminant does not
27 enter the system, there is no need to process it at the end of the system. If the system is
28

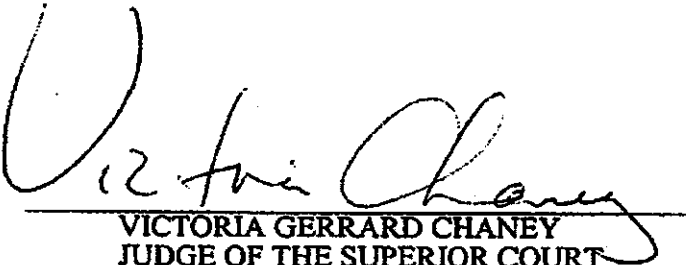
1 overloaded at the final point by flood, for example, there are less toxic materials which could
2 then enter the general water system.

3 Fourth, the Court does not look at the word "in" in quite as restrictive a manner as the
4 Arcadia and Monrovia Petitioners. The Arcadia and Monrovia Petitioners argued that the word
5 "in" only relates to the point of origin, and that this limits petitioner's ability to set regional
6 controls. However, what constitutes "in" depends on at what point one looks at the storm drain
7 system. Analogizing the storm drain system to a tree, any of the junctures between one little
8 leaf, the first little branch, twig, or a slightly larger branch, could be either from or into a regional
9 control or "from" that and "into" the larger system. The Court finds that the Permit's regulation
10 of what goes "into" the storm drain does not take away from the Petitioners' rights and needs to
11 control the process.
12

13
14 Finally, by regulating discharges into the storm drain system, Petitioners have the
15 opportunity to try to deal with it at the source of the contamination, like the car wash example
16 mentioned by the County Petitioners. It would allow Petitioners to review the car wash's
17 activities and stop the point of the contamination, while still permitting Petitioners to deal with
18 the regions. Petitioners could potentially control an area of five square miles at the source and
19 also operate a larger detention basin or treatment facility, as the Arcadia Petitioners referred to as
20 a regional approach. Regulating discharges "into" the storm drain system does not take away
21 from the regional approach as argued by the Arcadia Petitioners. Thus, this Court resolves this
22 issue in favor of the Regional Board and Intervenors.
23

24 IT IS SO ORDERED.

25 Dated: March ²⁴16, 2005

26
27 
28 VICTORIA GERRARD CHANEY
JUDGE OF THE SUPERIOR COURT

Addendum
Examples of Regional Board Consideration of US EPA Documents

- 1
- 2
- 3 US EPA, *Draft Data Summary for the Construction and Development Industry* (Feb. 2001)
(R0020445)
- 4 US EPA, *Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical*
Guidance (Dec. 2000) (R0022664)
- 5 US EPA, *National Conference on Tools for Urban Water Resource Management & Protection -*
Proceedings, Chicago, IL. Feb. 7-10, 2000 (July 2000) (R0019356)
- 6 US EPA, *Storm Water Phase II Compliance Assistance Guide* (March 2000) (R0010593)
- 7 US EPA, *Report to Congress on the Phase II Storm Water Regulations* (Oct. 1999) (R0010418)
- 8 US EPA, *Storm Water O&M Fact Sheet: Catch Basin Cleaning* (September 1999) (R0022652)
- 9 US EPA, *Storm Water Technology Fact Sheet: Sand Filters* (Sept. 1999) (R0022645)
- 10 US EPA, *Storm Water Technology Fact Sheet: Water Quality Inlets* (Sept. 1999) (R0022639)
- 11 US EPA, *Storm Water Management Fact Sheet: Record Keeping* (Sept. 1999) (R0017615)
- 12 US EPA, *Storm Water Management Fact Sheet: Coverings* (Sept. 1999) (R0017612)
- 13 US EPA, *Preliminary Data Summary of Urban Storm Water Best Management Practices* (Aug.
1999) (R0017609)
- 14 US EPA, *National Conference on Retrofit Opportunities for Water Resource Protection in*
Urban Environments - Proceedings, Chicago, IL, Feb. 9-12, 1998 (July 1999) (R0022320)
- 15 US EPA, *Guidance on Storm Water Drainage Wells* (Interim Final) (May 1998) (R0022206)
- 16 US EPA, *Economic Analysis of the Storm Water Phase II Proposed Rule: Initial Final Draft,*
(Aug. 1, 1997) (R0010281)
- 17 US EPA, Seminar Publication: *National Conference on Environmental Problem-Solving with*
Geographic Information Systems, Cincinnati, Ohio. Sept. 21-23, 1994 (September 1995)
(R0021617)
- 18 US EPA, *Economic Benefits of Runoff Controls* (Sept. 1995) (R0010711)
- 19 US EPA, Seminar Publication: *National Conference on Urban Runoff Management: Enhancing*
Urban Watershed Management at the Local, County, and State Level - March 30-April 2,
1993 - Chicago, IL. (April 1995) (R0015620)
- 20 US EPA, *Storm Water Discharges Potentially Addressed by Phase II of The National Pollutant*
Discharge Elimination System Storm Water Program - Report to Congress (March 1995)
(R0037330)
- 21 US EPA, *Storm Water Discharges Potentially Addressed By Phase II of the National Pollutant*
Discharge Elimination System Storm Water Program - Report to Congress, (March 1995)
(R0015026)
- 22 US EPA, *Changing the Course of California's Water* (1995) (R0033798)
- 23 US EPA, *NPDES Compliance Inspection Manual* (Sept. 1994) (R0014466)
- 24 US EPA, *A State and Local Government Guide to Environmental Program Funding Alternatives*
(Jan. 1994) (R0038104)
- 25 US EPA, *Guidance Manual for Implementing Municipal Storm Water Management Programs -*
Chapters 1-4 (Aug. 17, 1994) (R0013925)
- 26 US EPA, Pitt, Robert, Clark, Shirley, and Parmer, Keith, *Potential Groundwater Contamination*
from Intentional and Nonintentional Stormwater Infiltration (May 1994) (R0022959)
- 27 US EPA, *Overview of the Storm Water Program* (Oct. 1993) (R0010064 - 66)
- 28 US EPA, *Handbook - Urban Runoff Pollution Prevention and Control Planning* (September
1993) (R0009753 - 54)
- US EPA, *NPDES Storm Water Program: Question and Answer Document, Volume II* (July
1993) (R0008386 - 87)
- US EPA, *Coastal Nonpoint Pollution Control Program - Program Development and Approval*
Guidance (Jan. 1993) (R0039770); US EPA, *Investigation of Inappropriate Pollutant*
Entries into Storm Drainage Systems - A User's Guide (Jan. 1993) (R0022861)

- 1 US EPA, *Guidance Manual for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Separate Storm Sewer Systems* (Nov. 1992) (R0009927, R0009930 - 33)
- 2 US EPA, *Report on The EPA Storm Water Management Program* (Oct. 1992) (R0009871, 73)
- 3 US EPA, *Storm Water Management for Industrial Activities -Developing Pollution Prevention Plans and Best Management Practice* (Sept. 1992) (R0043866)
- 4 US EPA, *Storm Water Management For Construction Activities - Developing Pollution Prevention Plans and Best Management Practices* (Sept. 1992) (R0043388)
- 5 US EPA, *NPDES Storm Water Sampling Guidance Document* (July 1992) (R0037924)
- 6 US EPA, *Guidance Manual for the Preparation of NPDES Permit Applications for Storm Water Discharges Associated with Industrial Activity* (April 1991) (R0043657)
- 7 US EPA, *Remedial Action, Treatment, and Disposal of Hazardous Waste - Proceedings of the Sixteenth Annual RREL Hazardous Waste Research Symposium* (August 1990) (R0042527)
- 8 US EPA, *Contributions of Urban Roadway Usage to Water Pollution* (March 1975) (R0027336)
- 8 US EPA, *Urban Runoff Management Information/Education Products* (R0036525)
- 9 Federal Register, Part II EPA - *Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice* (October 30, 2000) (R0019785)
- 10 Federal Register, Part III EPA - 40 CFR Part 131, *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Rule* (May 18, 2000) (R0019104)
- 11 Federal Register - Part II EPA - 40 CFR Parts 9, 122, 123, and 124, *National Pollutant Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule* (Dec. 8, 1999) (R0018093)
- 12 Federal Register - Part III EPA - 40 CFR Part 122, *Interpretative Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems; Final Rule* (Aug. 9, 1996) (R0008344 - 46)
- 13 Federal Register - Part XIV EPA - *Final National Pollutant Discharge Elimination System Storm Water Multi-Sector General Permit for Industrial Activities; Notice* (Sept. 29, 1995) (R0016080)
- 14 Federal Register - Part II EPA - *Water Pollution Control, NPDES General Permits and Fact Sheets: Storm Water Discharges from Industrial Activity; Notice* (Nov. 19, 1993) (R0008341 - 42)
- 15 Federal Register - Part II EPA - 40 CFR Parts 122, 123, and 124, *National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Final Rule* (Nov. 16, 1990) (R0008238 - 39)
- 16 Letter from Alexis Strauss, Director Water Division, US EPA Region IX to Dennis A. Dickerson, Executive Officer, California Regional Water Quality Control Board, Los Angeles Region (Dec. 19, 2000) (R0008828)
- 17 US EPA, *NPDES Program Implementation Review, California Regional Water Quality Control Board 4, Los Angeles Region* (Oct. 1999) (R0018019)
- 18 Letter from Alexis Strauss, USEPA Region IX, to Walt Pettit, Executive Director, California State Water Resources Control Board, (Mar. 17, 1998) (R0008581)
- 19 Comparison of Los Angeles County Draft Storm Water Permit with Similar Permits in Orange and Santa Clara Counties; EPA Region 9 (June 10, 1996) (R0031402)
- 20 Memorandum from Eugene Bromley, EPA Region 9, to Maryann Jones, Storm Water Section, California State Water Resources Control Board, re: Role of Municipalities in Implementation of State General NPDES Permits for Storm Water Associated with Industrial Activity (Dec. 1993) (R0008388)
- 21 Memorandum from E. Donald Elliott, USEPA, to Nancy J. Marvel, US EPA Region IX, re: Compliance with Water Quality Standards in NPDES Permits Issued to Municipal Separate Storm Sewer Systems (Jan. 9, 1991) (R0008378)
- 22
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1 US EPA, EPA Industry Sector Notebooks on Various Industries, totaling 34 Sector Notebooks,
2 ((R0074054); (R0074257); (R0074442); (R0076608); (R0078502); (R0074609);
3 (R0074743); (R0075090); (R0075259); (R0075769); (R0077054); (R0077213);
4 (R0077805); (R0078059); (R0078280); (R0078820); (R0074847); (R0074938);
5 (R0075397); (R0075526); (R0075641); (R0075930); (R0076085); (R0076222);
6 (R0076369); (R0076508); (R0076775); (R0076909); (R0077411); (R0077524);
7 (R0077661); (R0077944); (R0078209); (R0078378))
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EXHIBIT H

*Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice*

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE**

COUNTY OF LOS ANGELES and
LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT,

Plaintiffs/Appellants,

v.

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, LOS
ANGELES REGION,

Defendant/Respondent.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., et al.,

Intervenor Defendants/Respondents.

AND CONSOLIDATED CASES

Case No. B184034

(Super. Ct. No. BS080758)

(Super. Ct. No. BS080548)

(Super. Ct. No. BS080792)

(Super. Ct. No. BS080807)

**APPELLANTS COUNTY OF LOS ANGELES' AND
LOS ANGELES COUNTY FLOOD CONTROL DISTRICTS'
OPENING BRIEF**

Appeal from the Superior Court of Los Angeles County
Superior Court Case Nos. BS080758, BS080548, BS080792, BS080807
The Honorable Victoria G. Chaney, Superior Court Judge

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<i>City of Burbank v. State Water Resources Control Board</i> (2005) 35 Cal.4 th 613	passim
<i>City of Malibu v. Santa Monica Mountains Conservancy</i> (2002) 98 Cal.App.4 th 1379	41
<i>City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region</i> , Case No. E037079 (January 26, 2006) (slip op.)..	49
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<i>Dioxin/Organochlorine Center v. Clarke</i> (9 th Cir. 1995) 57 F.3d 1517	14
<i>Dyna-Med, Inc. v. Fair Employment & Housing Comm'n</i> (1987) 43 Cal.3d 1379	37, 38, 39, 40

<i>English v. IKON Business Solutions, Inc.</i> (2002) 94 Cal.App.4 th 130	39
<i>Environmental Defense Center, Inc. v. United States Environmental Protection Agency</i> (9 th cir. 2003) 344 F.3d 832	43
<i>Family Planning Associates Medical Group, Inc. v. Belshe</i> (1998) 62 Cal.App.4 th 999	2
<i>Hoffman-Haag v. Transamerica Insurance Co.</i> (1981) 1 Cal.App.4 th 10	29
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<i>Kraus v. Trinity Management Services, Inc.</i> (2000) 23 Cal.4 th 116	38
<i>Natural Resources Defense Council, Inc. v. Costle</i> (D.C. Cir. 1977) 568 F.2d 1369	9
<i>People v. Coronado</i> (1995) 12 Cal.4 th 145	37
<i>San Francisco Baykeeper v. Whitman</i> (9 th Cir. 2002) 297 F.3d 877	14
<i>Stermer v. Board of Dental Examiners</i> (2002) 95 Cal.App.4 th 128	2
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33 U.S.C. § 1313(d)(1)(A).....	14
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I. INTRODUCTION

This is an action by the County of Los Angeles and the Los Angeles County Flood Control District (collectively, the "County") to protect the public fisc. The issue is whether an unelected body, the California Regional Water Quality Control Board for the Los Angeles Region ("Regional Board"), exceeded its statutory authority by ordering the County to spend money on programs that are conceded to be not technologically feasible and not cost effective. Because of the importance of this issue, 33 cities have filed similar challenges to the Regional Board's actions.

The County is not asking this Court to make public policy decisions. Those decisions have already had been made by Congress and the California Legislature and set forth in the statutes enacted by them. The County is only asking this Court to direct the Regional Board to comply with those statutes.

II. STATEMENT OF APPEALABILITY

This appeal is from a final judgment after trial and an order denying motions for new trial and to set aside and vacate the judgment (37 AA 9694-9701; 41 AA 10808-14).¹ The appeals consolidated with this appeal, Appellate Case Nos. B184035, B184036 and B184038, are likewise appeals from final judgments after trial and orders denying motions for new trial and to set aside and vacate the judgments (37 AA 9681-9726; 41 AA 10808-14). The final judgments in each case disposed of all issues between the parties.

III. STANDARD OF REVIEW

The County filed a petition for writ of mandate pursuant to Water

¹ As used herein, "AA" refers to Appellants' Appendix filed pursuant to California Rule of Court 5.1. It is preceded by the volume number and is followed by the page designation of the appendix.

"R" as used herein refers to the Administrative Record of proceedings before the Regional Board and is followed by the page of that record.

Code § 13330 and Code of Civil Procedure § 1085. Water Code § 13330(d) provides that Code of Civil Procedure § 1094.5 shall govern the proceedings and that, for the purpose of Section 1094.5(c), the court shall exercise its independent judgment on the evidence. The consolidated appeals are also appeals from petitions for writs of mandate pursuant to Water Code § 13330 and Code of Civil Procedure § 1085, as well as complaints for declaratory and injunctive relief.

In reviewing the superior court's findings, this Court applies a substantial evidence standard of review. *Stermer v. Board of Dental Examiners* (2002) 95 Cal.App.4th 128, 132. When the evidence is undisputed, and on issues of law, the standard of review is de novo. *Family Planning Associates Medical Group, Inc. v. Belshe* (1998) 62 Cal.App.4th 999, 1004.

IV. STATEMENT OF THE CASE

A. Course Of Proceedings Below

This case arises out of a permit issued by the Regional Board for the regulation of municipal stormwater and urban runoff in Los Angeles County. On December 13, 2001, the Regional Board issued Order No. 01-182, adopting National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS004001 (the "Permit"). The Permit was issued to the County of Los Angeles, the Los Angeles County Flood Control District and 84 incorporated cities within the County of Los Angeles (18 AA 4686-57).

The County and other permittees sought review of the Permit before the State Water Resources Control Board ("State Board"). That board, which was not obligated to hear the matter, declined review (7 AA 1926; *see also* 8 AA 2124).

The County then filed this action seeking review of certain aspects of the Permit (1 AA 191-212). Several cities also filed actions (1 AA 1-48;

2 AA 246-278, 279-325). By stipulation, intervenors Natural Resources Defense Council, Santa Monica Baykeeper, and Heal the Bay were allowed to intervene as respondents (See 17 AA 4389-4419, 4420-66, 4476-4504).

The cases were deemed related and heard together. The Regional Board and the intervenors filed two rounds of demurrers and motions to strike. As a result of these motions, the superior court ruled that the County and the cities could proceed in the related cases only under Water Code § 13330 and Code of Civil Procedure § 1094.5. The court granted demurrers without leave to amend to all claims under Code of Civil Procedure § 1085, all claims for declaratory relief, and all claims against the State Water Resources Control Board (13 AA 3259-68, 3277-84, 3285-95, 3296-3302; 17 AA 4327-47).²

² On the first round of demurrers and motions to strike, the superior court ruled (1) claims that the Permit imposed obligations without a subvention of funds in violation of California Constitution Article XIII B, section 6, were not ripe; (2) the State Water Board was not a proper party as it had not issued a decision; (3) the parties were limited to proceeding pursuant to Water Code § 13330 and C.C.P. § 1094.5, and (4) claims under Code of Civil Procedure § 1085 or claims for declaratory relief were improper (13 AA 3277-84, 3296-3302).

In *City of Arcadia*, Superior Court Case No. BS080548, the court further struck all allegations that the Regional Board was without authority to issue the Permit, that the Regional Board violated the Administrative Procedures Act, references to a University of Southern California study on the economic impact of a stormwater treatment program in Los Angeles County, references to Health & Safety Code § 57004, and the claims of two cities who did not seek administrative review of the Permit before the State Board (13 AA 3285-95).

In *City of Monrovia*, Superior Court Case No. BS080807, the court struck all allegations that the Regional Board violated the Administrative Procedures Act, Health & Safety Code § 57004, the Federal Paperwork Reduction Act, and the Federal Regulatory Flexibility Act (13 AA 3259-68).

On the second round of demurrers, the court reaffirmed its rulings that the parties could not seek declaratory relief, and that the claims that the Permit violated Article XIII B, section 6 of the Constitution were not ripe.

The parties stipulated to trying the cases together in two phases. Phase I consisted of a trial on six issues. Phase II consisted of a trial on fourteen issues (17 AA 4505-12).³ The trial was based on the administrative record and those documents as to which the superior court took judicial notice.

The superior court denied the petitions. The court's decisions are set forth in two statements of decisions, one for Phase I and one for Phase II (37 AA 9727-95). Separate judgments were entered in each case (37 AA 9681-726).

After the superior court entered its judgments, the California Supreme Court issued its decision in *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613. In *City of Burbank*, the Supreme Court held that a regional water quality control board must consider all factors set forth in Water Code § 13241 before it imposes NPDES permit requirements that are more stringent than those which federal law requires. 34 Cal.4th at 618.

The County and the Cities moved for a new trial and to set aside and vacate the judgment pursuant to Code of Civil Procedure §§ 657 and 663 based on the Supreme Court's holding in *City of Burbank*. Specifically, the County and the Cities requested that a new trial be granted or the judgment modified on the grounds that Part 2 of the Permit imposed requirements that exceeded federal law in violation of the holding in *City of Burbank* (37 AA 9831-36; 38 AA 9837-42, 9843-47, 9848-53, 9883-91, 10170-86). The cities in *City of Arcadia* and *City of Monrovia* also based their motions on the grounds that the Regional Board failed to consider Water Code § 13241 with respect to other portions of the permit and on the basis of newly

(17 AA 4327-47).

³ Of the fourteen issues to be addressed in Phase II, the parties reached a stipulation which was included in the judgment on six of the issues.

discovered evidence (38 AA 9883-91, 9996-1004).

On May 24, 2005, the superior court denied the motions for new trial and to vacate the judgment (41 AA 10808-14). These appeals then followed (41 AA 10815-23, 10824-30, 10845-50, 10851-55).

B. Facts

1. The Clean Water Act and The Porter-Cologne Water Quality Act

This case arises against the backdrop of the federal Clean Water Act and California's Porter-Cologne Water Quality Act. The Clean Water Act regulates the discharge of pollutants to waters of the United States and prohibits the discharge of pollutants to such waters except in compliance with the Act. 33 U.S.C. § 1311(a). The discharge of pollutants is authorized if done pursuant to permit, including permits issued under the NPDES program. 33 U.S.C. § 1342.

The Clean Water Act authorizes states to implement the NPDES permit program. 33 U.S.C. § 1342(b). California is one of the states authorized to implement this program. California's NPDES-implementing provisions are found in the Porter-Cologne Act. *See* Water Code §§ 13160 and 13370 et seq. The State Board is designated as the state water pollution control agency for all purposes stated in the Clean Water Act, Water Code § 13160.⁴ The State Board or the nine regional water quality control boards "as required or authorized" by the Clean Water Act are designated as the entities authorized to issue NPDES permits. Water Code § 13377.

Violations of NPDES permits will subject the violators to substantial criminal or civil penalties. Under the Clean Water Act, NPDES permit violators can be subject to criminal fines of up to \$50,000 per day or

⁴ Water Code §§ 13160 and 13370 et seq. refer to the "Federal Water Pollution Control Act." After the Water Pollution Control Act was amended, it commonly became known as the Clean Water Act.

imprisonment for not more than three years⁵ and civil penalties of up to \$27,500 per day for each violation. 33 U.S.C. § 1319(c) and (d); 40 C.F.R. § 19.4. Under the Porter-Cologne Act, an NPDES permit violator is also subject to criminal penalties of up to \$50,000 each day or imprisonment for not more than three years, and up to \$25,000 per day, or \$25 per gallon per day, for violation in civil penalties, depending upon the nature of the violation. Water Code §§ 13385 and 13387.

2. The Permit

The Permit is divided into two sections, "Findings of Fact" and an "Order." The Findings of Fact set forth the general nature of stormwater discharges, the Permit's geographic coverage, the federal, state, and "regional" regulations that underlie the Permit, implementation, and the public hearing process prior to the Permit's adoption (18 AA 4688-702). The Order section is divided into six parts, each imposing various obligations on the permittees:

Part 1. Discharge Prohibitions (Permit, p. 16);

Part 2. Receiving Water Limitations (*Id.* pp. 17-18);

Part 3. Storm Water Quality Management Program Implementation (*Id.* pp. 18-23);

Part 4. Special Provisions, including requirements for a public information and participation program, an industrial and commercial facilities inspection program, regulation of the development planning process, regulation and inspection of construction facilities, regulation of the municipalities' own activities, and an illicit connections and discharges elimination program (*Id.*, pp. 23-53);

⁵ Where a person is placed in imminent danger of death or serious bodily injury, a violator can be subject to a fine of not more than \$250,000 or by imprisonment of not more than fifteen years. 33 U.S.C. § 1319(c).

Part 5. Definitions (*Id.*, pp. 53-63); and

Part 6. Standard Provisions (*Id.*, pp. 64-70) (18 AA 4702-56.).

The Permit is the third stormwater permit issued to the permittees.⁶

Neither of the prior permits contained the provisions now in dispute.

3. The Regional Board

As noted above, the Porter-Cologne Act makes the State Board and the nine regional water quality control boards responsible for issuing NPDES permits, including municipal stormwater permits. Water Code § 13377. These permits are required to apply, and be consistent with, the federal Clean Water Act. Water Code §§ 13372 and 13377.

The Regional Board is not an elected body. It is composed of nine members appointed by the Governor, Water Code § 13201(a), each appointed for a term of four years. Water Code § 13202.

Because Regional Board members are not elected, they do not have to answer to the people of the community. A Regional Board member does not have to vote to impose the taxes necessary to pay for the programs he or she requires under a municipal permit. A Regional Board member does not have to choose between funding stormwater programs or public hospitals, police and firefighters. Yet, Regional Board members are given the authority to issue municipal NPDES permits that require the significant expenditure of public funds.

⁶ The first permit was issued in 1990, at the commencement of the storm water permit program. Because NPDES permits have a life-span of not greater than five years plus the period while a completed application for a new permit is pending (40 CFR §§ 122.6 and 122.46; 23 Cal. Code Reg. § 2235.4), the permit was renewed in July, 1996, and again in December, 2001 (*See* R8043).

4. Municipal Stormwater

"Stormwater" is defined by federal regulation as "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13). The Permit adopts this definition (18 AA 4748).

To manage stormwater and prevent flooding, municipalities construct and operate storm drain systems, referred to in the federal Clean Water Act as a "municipal separate storm sewer system." Stormwater flows into the storm sewer system and is thereafter discharged from one or many outfalls into surface waters.⁷

5. The Los Angeles County Flood Control District

In 1915, the California Legislature created the Los Angeles County Flood Control District for the purpose of minimizing flooding and flood damage in Los Angeles County. Water Code, App. § 28-1. (*See generally* R50244-49). The District is one of the largest flood control systems serving a metropolitan area. The District serves a population of approximately 9.5 million people and covers a geographic area of more than 3,100 square miles (18 AA 4693). Its system consists of over 100,000 catch basins, over 4,300 miles of underground and above ground storm drains, and over 485 miles of open channels covering the Los Angeles basin from the mountains to the ocean (R8044).

The District owns and operates the main channels of the flood control system, as well as catch basins and drains in the unincorporated areas of the County. Each of the other permittees owns and operates various portions of the storm sewer system within its jurisdiction (*Id.*).

In the Permit, the municipal separate storm sewer system, including the Los Angeles County Flood Control District, is referred to as the "MS4."

⁷ In some areas of the country, municipalities have combined sewer and storm drain systems. In Los Angeles County, the sanitary sewer and storm drain systems are separate.

The waters into which the sewer system discharges are referred to as the "Receiving Waters" (18 AA 4744, 4746).

6. The Nature of Municipal Stormwater Permits and the MEP Standard

Under the Clean Water Act, NPDES permits regulate "point source" discharges. See 33 U.S.C. §§ 1342(a) and 1362(12). A point source is defined to be any "discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

Because stormwater is generated from storms, which are unpredictable, and because there was also a substantial question as to whether the stormwater discharge was from a point source, EPA originally exempted stormwater discharges from the NPDES program. See *Natural Resources Defense Council, Inc. v. Costle* (D.C. Cir. 1977) 568 F.2d 1369, 1372, 1377-78, 1382. NPDES permits therefore originally were required solely of discrete sources, such as industrial dischargers and publicly owned works, not municipal stormwater discharges. See, e.g., 33 U.S.C. § 1311(b)(1).

Costle overturned EPA's categorical exemption of stormwater discharges. 568 F.2d at 1383. EPA then promulgated several rounds of regulations attempting to address stormwater discharges. Each round was challenged. See generally, *Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159, 1163.

In 1987, Congress amended the Clean Water Act to give EPA explicit direction on how to regulate stormwater discharges. In so doing, Congress recognized that a municipal stormwater permittee is qualitatively different from other NPDES permittees. For example, while an industrial permittee directly generates the discharge that is being regulated, a municipal permittee does not; a municipality cannot control the rain, and stormwater will flow regardless of any action taken by it. While an

industrial permittee can reduce or control the concentrations of pollutants that enter its wastewater stream, municipalities cannot; pollutants are deposited on city streets, curbs, gutters and catch basins through aerial deposition and other means and are then carried by runoff into the storm sewer. While an industrial permittee has the power to control the timing and volume of its discharge, municipal permittees cannot; rain and melting snow that flow into the storm sewers and flood control channels are intermittent, unpredictable and uneven. Finally, unlike private permittees, municipalities are responsible for the health and welfare of their communities, including the quality of their water. Municipalities, therefore, have a significant interest in reducing pollution, whether a permit exists or not.

As a result of these differences, Congress enacted a statutory scheme that treats municipal stormwater dischargers differently from non-municipal stormwater dischargers. First, Congress set forth different dates by which industrial, as opposed to certain municipal dischargers, were required to obtain a permit. 33 U.S.C. § 1342(p).

Second, Congress set forth a different pollution reduction standard for industrial as opposed to municipal stormwater dischargers. Industrial dischargers are required to meet all applicable requirements of 33 U.S.C. § 1342(p) and 33 U.S.C. § 1311. This means that industrial dischargers are required to implement "best available technology economically available," 33 U.S.C. § 1311(b)(2)(A), and, of significance here, to further meet "any more stringent limitation, including those necessary to meet water quality standards. . . ." 33 U.S.C. § 1311(b)(1)(C).

In contrast, Congress explicitly did not require municipal stormwater dischargers to meet the requirements of section 1311 or other portions of section 1342. Instead, Congress enacted a different standard:

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-storm water 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.

33 U.S.C. §1342(p)(3)(B) (emphasis added). See generally *Defenders of Wildlife*, 191 F.3d at 1164-66.

The requirement in subparagraph (iii) is known as the "maximum extent practicable" or "MEP" standard for municipal stormwater permits. Congress did not define MEP, and EPA has not adopted any regulations defining it. As a result, regional water quality control boards have adopted their own definitions of MEP in the municipal permits they issue. Here, the Los Angeles Regional Board, referencing State Board Order WQ2000-11, defined MEP as that which is technologically feasible and cost effective (18 AA 4744; R007511 (Order WQ2000-11)).⁸

V. ARGUMENT

In this case, the County challenged Part 2 of the Permit, which contains receiving water limitations, the application of the MEP standard to the Permit, and the Permit's requirements to inspect industrial, commercial and construction sites. In addition, following the decision of the California Supreme Court in the *City of Burbank* case, the County, along with other

⁸ Permit Finding of Fact E.6. also references a memorandum of the State Board's Office of Chief Counsel interpreting the meaning of MEP "to include technical feasibility, cost, and benefit derived with the burden being on the municipality to demonstrate compliance with MEP by showing that a [best management practice] is not technically feasible in the locality or that [best management practices] costs would exceed any benefit to be derived." (18 AA 4695.)

permittees, moved for a new trial and to set aside and vacate the judgments on the issue of the Regional Board's failure to consider the factors set forth in Water Code § 13241. These are the issues on appeal before this Court.⁹

A. The Superior Court Erred in Declining to Order the Regional Board to Set Aside Part 2 of the Permit

The superior court was required to issue a writ of mandate directing the Regional Board to set aside the Permit or portions thereof where the Regional Board had proceeded without or in excess of its jurisdiction, where the Regional Board acted without first holding a fair hearing, or where the Regional Board prejudicially abused its discretion. C.C.P § 1094.5(b). Abuse of discretion is established where the Regional Board has not proceeded in the manner required by law, the order is not supported by the findings, or the findings are not supported by the evidence. *Id.*

The County requested the superior court to order the Regional Board to set aside Part 2 of the Permit on the grounds that its adoption was not in accordance with law and was a prejudicial abuse of discretion. Specifically, Part 2 is impossible to comply with, attempts to do so will require the County to expend funds on programs that are concededly not technologically feasible and not cost effective, and the Regional Board had failed to consider the cost and other factors before adopting this part. (14

⁹ In addition to these issues, the County also challenged other aspects of the Permit, specifically, (1) the ability of the Executive Officer under Part 3.C to reopen and amend the Permit, (2) Part 4.D.1 and aspects of the monitoring program for the Permit, concerning what constituted a "peak flow" for purposes of studies on that issue and (3) Part 4.C.3.d(3), relating to a requirement that permittees respond within "one business day" to complaints regarding facilities within their jurisdiction. These matters have been resolved with the Regional Board pursuant to stipulation and are not at issue in the appeal.

AA 3523; 38 AA 9843-53.). The superior court denied the County's request. This was error.

1. Permit, Part 2

Part 2 of the Permit is captioned "Receiving Water Limitations."¹⁰ Unlike other parts of the Permit, Part 2 does not address a specific program or dictate specific action. Instead, it contains a general prohibition against discharges from the County's flood control channels that "cause or contribute to" a violation of water quality standards¹¹ or a condition of nuisance. Parts 2.1 and 2.2 provide:

1. Discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives are prohibited.
2. Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible for (sic), shall not cause or contribute to a condition of nuisance (18 AA 4704).

2. When the Regional Board Adopted Part 2, It Knew That It Would Be Impossible To Comply With Parts 2.1 and 2.2

When the Regional Board adopted the Permit, it knew that discharges from the County's flood control channels would cause or contribute to the violation of water quality standards and potentially

¹⁰ Receiving waters are those waters into which a MS4 discharges. In Los Angeles County, receiving waters include bodies of water such as the Los Angeles and San Gabriel Rivers (parts of which also are considered part of the MS4 system) and the Pacific Ocean.

¹¹ "Water quality standards" consist of the "designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." See 33 U.S.C. § 1313(c)(2)(A). Generally, "uses" are the types of activities for which the water can be employed (e.g., recreation, aquatic life protection) and "criteria" are the numeric or narrative water quality levels necessary to support those designated uses. "Water quality objectives" is the California term for water quality criteria. See Water Code § 13050(h).

nuisance conditions. It further knew that neither the County nor any other permittee could prevent those violations during the Permit's term. In other words, the Regional Board adopted Parts 2.1 and 2.2 knowing that it would be impossible to comply with, potentially subjecting the County and other permittees to up to \$27,500 in civil penalties per day.

To understand the Regional Board's knowledge that the County and the other permittees could not comply with Parts 2.1 and 2.2 during the Permit's term, it is necessary to understand another Clean Water Act program, the "Section 303(d) list" and "Total Maximum Daily Loads" ("TMDLs") program, as well as the Regional Board's rejection of the County's and other permittees requests to clarify or modify Part 2.

3. TMDLs and the Section 303(d) List

Under the Clean Water Act, states are obligated to identify and list those waters for which imposition of technology-based NPDES controls required by 33 U.S.C. § 1311 has not achieved compliance with water quality standards. 33 U.S.C. § 1313(d)(1)(A). This list is known as the "Section 303(d)" or "impaired water bodies" list. Because the listing is based on the finding that the water body exceeds the water quality standards for the pollutant causing the listing, by definition, the placement of a water body on this list means that the water body exceeds water quality standards for at least the particular pollutant causing the listing.

After placing a water body on the Section 303(d) list, a state is required to adopt TMDLs for the pollutants that caused the listing. TMDLs represent the total amount of a pollutant that can be introduced into the water body without causing an exceedance of a water quality standard, taking into consideration seasonal variations and a margin of safety. 33 U.S.C. § 1313(d)(1)(C). *See generally, San Francisco Baykeeper v. Whitman* (9th Cir. 2002) 297 F.3d 877, 880; *Dioxin/Organochlorine Center v. Clarke* (9th Cir. 1995) 57 F.3d 1517, 1520; *Communities For A Better*

Environment v. State Water Resources Control Board (2003) 109 Cal.App.4th 1089, 1095-96.

At the time the Regional Board adopted the Permit, the Regional Board and the State Board had already listed on the Section 303(d) list as not meeting water quality standards various Los Angeles County receiving waters, including waters into which the flood control system discharges. (See State Board Resolution No. 98-055). These listings were based on pollutants the Regional Board had found to be present in municipal stormwater (See 18 AA 4689 (Finding B.3)). Additionally, only three months before adopting the Permit, the Regional Board had adopted TMDLs for trash for two of those listed water bodies, the Los Angeles River and Ballona Creek Watersheds (18 AA 4697 (Finding E.14); R8047-48).¹² These TMDLs applied only to municipal permittees and Caltrans, no other discharger, and projected a *ten*-year period before the Los Angeles River and Ballona Creek would meet water quality standards (18 AA 4821, 21 AA 5492).

At the time it adopted the Permit, the Regional Board also had scheduled the adoption of several more TMDLs to address other pollutants which the Regional Board believed were present in municipal stormwater (See 18 AA 4696 (Finding E.8; R8047-48)). Since the adoption of the Permit, the Regional Board has in fact adopted these TMDLs. Like the Trash TMDLs, each of these TMDLs contains a Regional Board finding that municipal stormwater discharges are causing or contributing to a violation of the water quality standard at issue. Like the Trash TMDLs, each of these TMDLs contains a projected time period beyond the term of

¹² The Los Angeles River Trash TMDL has recently been invalidated. See *City of Arcadia v. State Water Resources Control Board* (Fourth Appellate Dist. January 26, 2006), Case No. D43877. The Ballona Creek Trash TMDL remains in place.

the Permit before the water body would meet water quality standards. See 23 Cal. Code Reg. §§ 3939.4 (Bacteria/Marina Del Rey), 3939.12 (Bacteria/Los Angeles Harbor), 3939.15 (Bacteria/Malibu Creek), 3939.18 (Sediment/Ballona Creek), 3939.19 (Metals/Los Angeles River), 3939.20 (Metals/Ballona Creek).

Thus, in listing Los Angeles County water bodies on the Section 303(d) list as violating water quality standards before adopting the Permit, in issuing the Trash TMDLs for the Los Angeles River and Ballona Creek watersheds before adopting the Permit, in having scheduled the issuance of additional TMDLs, in knowing that water quality standards could not be met during the term of the Permit, and in knowing that municipal stormwater contained the pollutants at issue, the Regional Board had already found that municipal stormwater discharges were causing or contributing to a violation of water quality standards and would continue to do so beyond the Permit's terms. The Regional Board adopted Parts 2.1 and 2.2 knowing that the County and other permittees could not comply with these parts.

4. Permit, Parts 2.3 and 2.4 and the County's Request for Clarification or Modification

Recognizing that discharges from the flood control system would contribute to what it considered to be exceedances of water quality standards, the Regional Board included in the Permit Parts 2.3 and 2.4 to address the consequences of those exceedances. Part 2.3 provides that, when exceedances exist, the permittees shall comply with Parts 2.1 and 2.2 through an "iterative process." This iterative process involves notifying the Regional Board of the exceedances, identifying the "Best Management Practices" ("BMPs") being implemented,¹³ proposing additional BMPs,

¹³ BMPs are the structural and non-structural pollution control devices and practices used to reduce or eliminate the discharge of pollutants (18 AA

and implementing of those BMPs. Part 2.4 provides that the permittees need to undertake this iterative process only once during the Permit term, unless the Regional Board directs otherwise (18 AA 4704-05).

In light of the Regional Board's position in its TMDLs that discharges from the flood control system were causing or contributing to a violation of water quality standards, and in light of the Regional Board's recognition that the County or other permittees could not prevent such discharges during the Permit's term, the County specifically requested the Regional Board to clarify or modify Part 2 to make it clear that the County was in compliance with the Permit as long as it was in good faith compliance with Parts 2.3 and 2.4. Otherwise, the County, at a minimum, would be subject to up to \$27,500 per day in civil penalties for being in violation of the Permit. Specifically, the County requested that the Regional Board add to Part 2.4 the sentence, "so long as the Permittee has complied with the procedures set forth in Part 2.3, the permittee is in compliance with this permit" (R4621).

The Regional Board rejected the County's request. Before the superior court, the Regional Board described its position thusly:

These provisions provide, first, that discharges "cannot cause or contribute to a violation of water quality standards" (Part 2.1) or "condition of nuisance" (Part 2.2). . . . Compliance with the Permit is achieved by complying with these requirements. *These restrictions are absolute and unconditioned* . . . (19 AA 4962 (Respondent's Brief at 17:10-18) (emphasis added)).

Therefore, according to the Regional Board, the County must comply with Part 2.1 and 2.2, notwithstanding the fact that, when the Regional Board adopted the Permit, it knew that the County could not comply. In other words, the Regional Board adopted Parts 2.1 and 2.2 (1) even though, unlike other NPDES permittees, the County and the other

4741).

permittees could not refuse to accept the Permit, and (2) knowing that the County and the other permittees could not comply with its terms, thereby making them subject to potential fines of up to \$27,500 per day.

5. The Adoption of a Permit That is Impossible to Comply With Violates the Clean Water Act and is Arbitrary and Capricious

The adoption of a permit that is impossible to comply with is arbitrary and capricious and violates the Clean Water Act. As discussed above, in adopting the section on municipal stormwater permits, 33 U.S.C. § 1342(p)(3)(B), Congress specifically recognized the unique circumstances municipal stormwater permittees faced, that the discharges into and from a municipal storm sewer are highly variable, and that municipalities are unable to control the sources of pollutants in these discharges. Indeed, as the Regional Board itself stated in its findings in the Permit:

1. Storm water discharges consist of surface runoff generated from various land uses and all the hydrologic drainage basins that discharge into water bodies of the State. The quality of these discharges varies considerably and is affected by the hydrology, geology, land use, season, and sequence and duration of hydrologic events. . . .
2. Certain pollutants present in storm water and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over (18 AA 4688).

Given the nature of municipal storm water discharges, Congress authorized only one total prohibition to be included in municipal storm water permits: such permits shall "effectively prohibit non-storm water discharges into the storm sewers" 33 U.S.C. § 1342(p)(3)(B)(ii). All other provisions of the Permit shall only

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.

33 U.S.C. § 1342(p)(3)(B)(iii).

Thus, Congress did not authorize permits that would automatically subject municipalities to penalties for reasons beyond their control. Congress authorized permits that would contain the requirements set forth in 33 U.S.C. § 1342(p)(3)(B).

As a matter of law, the Clean Water Act does not require permittees to achieve the impossible. In *Hughey v. JMS Dev. Corp.* (11th Cir.) 78 F.3d 1523, *cert. den.*, 519 U.S. 993 (1996), the plaintiff sued JMS Development Corporation for failing to obtain a stormwater permit authorizing the discharge of stormwater from its construction site. Because construction is considered to be an "industrial activity" within the meaning of 33 U.S.C. § 1342(p)(3), the plaintiff argued that JMS had no authority to discharge any stormwater, i.e. a "zero discharge standard," until JMS obtained a stormwater permit. 78 F.3d at 1527. JMS conceded that stormwater had been discharged from its property and that it did not have a NPDES stormwater permit. JMS contended, however, that it was not in violation of the Clean Water Act even though the Act required the permit because the Georgia Environmental Protection Division, the agency responsible for issuing the permit, was not yet prepared to issue a stormwater permit. As a result, it was impossible for JMS to meet the permit requirement. *Id.* at 1527.

The Eleventh Circuit held that the Clean Water Act does not require a permittee to achieve the impossible. The court commenced its analysis by noting that "Congress is presumed not to have intended an absurd (impossible) result." *Id.* at 1529.

Based on the facts of the case, the Court then held:

In this case, once JMS began the development, compliance with the zero discharge standard would

have been impossible. Congress could not have intended a strict application of the zero discharge standard in section 1311(a) when compliance is factually impossible. The evidence was uncontroverted that whenever it rained in Gwinnett County some discharge was going to occur; nothing JMS could do would prevent all rain water discharge.

Id. at 1530. The court concluded, "*Lex non cogit ad impossibilia*: The law does not compel the doing of impossibilities." *Id.*

The same rule applies here. Congress in the Clean Water Act did not require the County and the other permittees to do the impossible. Because municipal permittees, as involuntary permittees, have no choice but to obtain a municipal stormwater permit, the Permit must provide a mechanism for compliance. If compliance with Parts 2.3 and 2.4 does not constitute compliance with Parts 2.1 and 2.2, then the Regional Board has issued a Permit with which it is impossible to comply.

In this regard, the superior court misconstrued the County's argument regarding impossibility. In the superior court, the County made the same argument as is made here, that it was impossible to comply with Part 2.1 and potentially 2.2 of the Permit (See 18 AA 4644-46; 21 AA 5469-70). The superior court did not consider this argument with respect to Part 2.1 or 2.2. (See 37 AA 9733-36) (no discussion of impossibility). Instead, the superior court considered impossibility only with respect to arguments concerning the scope of the MEP standard (37 AA 9736-38).

6. To the Extent the Superior Court's Discussion of Impossibility Can Be Construed as a Finding that it was Possible to Comply with Part 2.1 or 2.2, Such Finding is Not Supported By Substantial Evidence

To the extent that the superior court's discussion of impossibility with regard to MEP could be construed as a finding that it was possible to comply with Part 2.1 or 2.2, such finding is not supported by substantial evidence. There is no evidence in the record that establishes or even

addresses a permittee's ability to prevent discharges from causing or contributing to a violation of water quality standards in Los Angeles County waters.

This is apparent from the evidence cited by the superior court in its discussion of impossibility (37 AA 9738). The superior court's discussion of impossibility contains a footnote citation, footnote 7, at the end of its discussion. *Id.* The footnote is unclear because it references itself as well as the following footnote.

In any event, none of the evidence cited in the court's Statement of Decision addresses the ability to achieve compliance with water quality standards in Los Angeles waters during the Permit's term. Footnote 1 addresses the definition of MEP, not the ability to comply with Part 2.1 or 2.2 (37 AA 9733). Footnote 2 is a list of other stormwater permits, a citation to an EPA memorandum and a citation to a memorandum from the Regional Board's staff counsel; this evidence does not address compliance with Part 2 (37 AA 9734). Footnotes 3 and 4 refer to State Board orders in other cases, regulations and provisions relating to TMDLs in general, and to the Los Angeles River and Ballona Creek Trash TMDLs in particular. *Id.* These documents do not address the ability to comply with Part 2. Footnote 5 contains references to other sections of the Permit itself as well as other stormwater permits (37 AA 9737). These documents also do not demonstrate an ability to comply with Part 2.

The evidence cited in the remaining footnotes likewise does not establish an ability to comply with Part 2. Footnote 6 refers to specific studies relating to particular pollution control practices, not the ability to achieve water quality standards in Los Angeles County waters. *Id.* Footnote 8 refers to documents relating to the cost of various pollution control practices and stormwater programs, not whether it is technically possible to achieve water quality standards in Los Angeles County waters

(37 AA 9738). Finally, footnote 7 refers to the addendum to the Statement of Decision. That addendum listed USEPA documents considered by the Regional Board (37 AA 9747-48). These documents address stormwater programs and approaches to pollution control in general, not achieving water quality standards in Los Angeles County. *Id.*

In contrast, there was evidence before the Regional Board that the County and the other permittees could not achieve water quality standards during the Permit's term. The Regional Board itself, by its adoption of the Trash TMDLs, had found that the County and other permittees would not be able to comply with Part 2.1 during the Permit term (18 AA 4697; 21 AA 5491-92; R8047-48). Any finding that it was possible to comply with Part 2.1 or 2.2 is not supported by substantial evidence.

7. *Building Industry Ass'n of San Diego County v. State Water Resources Control Board is Distinguishable*

This case is not the first case in which the California courts have been called upon to address this impossibility issue. In *Building Industry Ass'n of San Diego County v. State Water Resources Control Board* (2004) 124 Cal.App.4th 866 (hereafter "*BIA*"), the San Diego Building Industry Association, a business organization representing the interests of construction-related businesses, *id.* at 877, challenged the municipal stormwater permit issued by the San Diego Regional Water Quality Control Board to San Diego municipalities. One basis for the challenge was that compliance with water quality standards in San Diego was impossible. *Id.* at 888.

The court in *BIA* rejected that challenge. Significantly, however, the court did not reject the premise that it would be arbitrary or capricious for a regional water quality control board to adopt a permit with which it is impossible to comply. Instead, the court rejected the challenge on evidentiary and procedural grounds. The trial court had specifically

concluded that the Building Industry Association had failed to make a factual showing that water quality standards could not be achieved in San Diego waters, and the Court of Appeal found that the Building Industry Association failed to present a proper appellate challenge to that finding. *Id.* at 888.

The record here is quite different. In contrast to the plaintiffs in *BIA*, who were not the municipalities subject to the permit, here the County and thirty-three other permittees are bringing the challenge. More significantly, the County and other municipalities raised the issue of impossibility at the administrative level and before the superior court, and the record contains direct evidence of impossibility: the Regional Board's listing of the impaired waterbodies and adoption of the Trash TMDLs that, by definition, establish that Part 2.1 and potentially 2.2 cannot be met.¹⁴

8. The Regional Board's Inclusion of Part 2.1 Was Based On An Error of Law

At the administrative level, the Regional Board asserted that it was required to include Parts 2.1 in the Permit. In the fact sheet issued in support of the Permit, the Regional Board stated: "MS4s are not exempted from compliance with water quality standards. CWA §§ 301(b)(1)(C) requires NPDES permits to incorporate effluent limitations, including those necessary to meet water quality standards . . ." (R8040.)

¹⁴ In *BIA*, the Building Industry Association also contended it was not required to challenge the facts underlying the trial court's determination because achieving water quality standards required the San Diego permittees to adopt practices more stringent than the San Diego permit's MEP standard. The court rejected that challenge because it found it feasible to go beyond the San Diego permit's definition of MEP. *Id.* at 889.

The San Diego permit's MEP requirement, however, is less stringent and thus significantly different than the Los Angeles Permit's MEP requirements. See discussion in Section V.C.1, *infra*. In any event, the record here establishes that it is impossible to meet water quality standards during the Permit's terms.

The Regional Board's assertion that it was required to include Part 2.1 in the Permit is clearly erroneous as a matter of law. In adopting 33 U.S.C. § 1342(p), Congress explicitly omitted the requirement that municipal stormwater permits include a provision requiring compliance with water quality standards. The requirement that a NPDES permit contain a provision requiring compliance with water quality standards is set forth in 33 U.S.C. § 1311(b)(1)(C). That section provides that, in order to carry out the objectives of the chapter, there shall be achieved "any more stringent limitation, including those necessary to meet water quality standards . . ." In adopting 33 U.S.C. § 1342(p)(3)(B), Congress explicitly excluded the requirement that municipal stormwater permits meet the requirements of section 1311. Instead, as noted above, those permits shall include requirements prohibiting non-stormwater discharges into the storm sewers, and controls "to reduce the discharge of pollutants to the maximum extent practicable"

Any doubt about this issue was laid to rest by the Ninth Circuit in *Defenders of Wildlife, supra*. In this case, the plaintiffs challenged EPA's issuance of five municipal stormwater permits which did not contain numeric limitations to insure compliance with water quality standards. *Id.* at 1161. To respond to this contention, the Ninth Circuit undertook an examination of 33 U.S.C. § 1342(p) and Congress' intent in adopting it. The Ninth Circuit held that Congress adopted two separate, different standards with respect to stormwater permits: one for industrial dischargers who must comply section 1311, and one for municipal dischargers who are not required to comply with section 1311. The court held:

the Water Quality Act unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

Id. at 1164 (emphasis added). Thus, the Regional Board's belief that it was required to include Part 2.1 of the Permit is wrong as a matter of law.

The Permit also contains a finding that the State Board had issued a 1999 precedential decision identifying receiving water limitations language to be included in municipal stormwater permits, and that Part 2 was consistent with that decision (18 AA 4699; (Finding E.24)). See *Own Motion Review of the Petition of Environmental Health Coalition*, State Board Order No. WQ 99-05 (R0001965-68). The superior court gave deference to that decision (37 AA 9736). The State Board in Order No. WQ 99-05, however, did not address whether language requiring compliance with water quality standards should be included in permits, or whether its language should be modified, where it is impossible to comply. The State Board in Order No. WQ 99-05 also based its decision on an EPA directive whose basis was thereafter specifically rejected by the Ninth Circuit in *Defenders of Wildlife*. 191 F.3d at 1165. The State Board's 1999 decision is therefore not controlling. In any event, neither the Regional Board nor the State Board can lawfully order a municipal stormwater permit condition with which it is impossible to comply.¹⁵

¹⁵ The superior court also cited a 1998 letter by Alexis Strauss, the then-acting Director of the Water Division of EPA Region IX, objecting to an earlier version of receiving waters language that included a provision stating that compliance with the iterative process would constitute compliance with the permit (37 AA 9736; See R008582). This 1998 objection, however, is not applicable to the Regional Board's actions in adopting the Permit in December 2001. Ms. Strauss' objection was based on her 1998 belief that municipal stormwater permits must comply with 33 U.S.C. § 1311(b)(1)(C). In 1999, the Ninth Circuit explicitly rejected this EPA interpretation. *Defenders*, 191 F.3d at 1164-66.

9. The Regional Board Does Not Have Discretion to Adopt a Permit Term with Which it is Impossible To Comply

The superior court also cited *Defenders of Wildlife*, apparently for the proposition that the Regional Board had the discretion to require compliance with water quality standards (37 AA 9734, 9736). In *Defenders of Wildlife*, the city permittees contended that EPA could not require strict compliance with state water quality standards in their permit. The Ninth Circuit held that EPA had the discretion to do so. 191 F.3d at 1159.

Again, the Ninth Circuit examined 33 U.S.C. § 1342(p)(3)(B)(iii), and held that the phrase "and such other provisions as the Administrator determines appropriate" gave EPA the authority to require compliance with water quality standards but did not require EPA to do so:

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.

191 F.3d. at 1166.

The Ninth Circuit was not, however, faced with the issue of whether EPA or a state could include a provision requiring strict compliance with water quality standards where such provision would be impossible to comply with. In *Defenders of Wildlife*, the opposite was true; the permit contained a provision that the permittees' compliance with the stormwater management program constituted a schedule of compliance with the permit. *Id.* at 1161. (See Ariz. Admin Code § R18-11-121 ("A schedule to bring a point source discharge of storm water into compliance with a water quality standard may be established in a National Pollutant Discharge Elimination System permit. A compliance schedule for a storm water discharge shall

require implementation of all reasonable and cost-effective best management practices to control the discharge of pollutants in storm water.”))¹⁶

This is precisely the request the County made of the Regional Board at the administrative level, *i.e.*, that the Regional Board clarify or modify the Permit to provide that compliance with Part 2.3 constitutes compliance with Part 2 (R4621).¹⁷ The Regional Board rejected that request.

Where a municipal permittee is required to obtain a permit, and cannot decline it, it is an abuse of discretion to issue a permit with which it is impossible to comply. The Regional Board abused its discretion here.¹⁸

¹⁶ The Ninth Circuit also did not address whether EPA or a state could include a provision in a permit requiring compliance with water quality standards if that provision would require the permittees to expend funds on programs beyond the MEP standard. This issue is addressed in Section V.C, *infra*.

¹⁷ The Regional Board took precisely this approach in the County's and other permittees' prior 1996 municipal stormwater permit. Like the current permit, the 1996 permit provided that water quality objectives and water quality standards would serve as the receiving water limitations for discharges under that permit, but then also provided that "timely and complete implementation by the Permittee of the stormwater management programs described in this Order shall satisfy the requirement of this section and constitute the compliance with receiving water limitations" (R28671).

¹⁸ In its Statement of Decision, the superior court implied that the existence of Part 2.3, the iterative process, somehow ameliorated the impossibility of complying with Parts 2.1 and 2.2 (37 AA 9735). Part 2.3, however, does not render compliance with Part 2 any less impossible, unless compliance with Part 2.3 constitutes compliance with Part 2 of the Permit. As discussed above, the County made this request to the Regional Board. The Regional Board denied this request and the superior court declined to order the Regional Board to grant it.

B. The Superior Court Erred in Failing to Grant a Writ of Mandate Ordering the Regional Board to Consider the Factors Set Forth in Water Code § 13241 Before Adopting Part 2 of the Permit

1. The Motions for New Trial and to Set Aside and Vacate the Judgments

In support of its judgment, the superior court held that the Regional Board was not required to consider economics or other Water Code § 13241 factors when adopting the Permit (37 AA 9736, 9771). The superior court further found that the Regional Board had considered cost of compliance in conjunction with the MEP standard and with regard to certain specific requirements of the Permit. *Id.*

After the superior court's entry of judgment, the Supreme Court issued its decision in *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613. In *City of Burbank*, the Supreme Court held that a regional water quality control board must consider all factors set forth in Water Code § 13241 before it imposes NPDES permit requirements that are more stringent than those required by federal law. 35 Cal.4th at 618.

The County and the other appellants moved for a new trial based on *City of Burbank*. Specifically, they requested the superior court to grant a new trial or to modify the judgment to order the Regional Board to consider the factors set forth in Water Code § 13241 before adopting Part 2 of the Permit (37 AA 9831-9836, 9837-42; 38 AA 9850-51, 9883-84; 39 AA 10170, 10175-76).

The superior court denied the motions on three grounds. It first held that the Permit did not exceed requirements established by federal law and therefore *City of Burbank* did not apply (41 AA 10813). The superior court next held that, in any event, the Regional Board did consider section 13241 factors in adopting the Permit (41 AA 10811). Finally, the court held that in doing so, the Regional Board was not required to undertake the

consideration of economic factors with respect to discrete Permit requirements, and found the Regional Board's general finding that it "considered the requirements of Section 13263 and 13241" to be sufficient (41 AA 10811-12).

2. Parts 2.1 and 2.2 of the Permit Are Not Required By The Clean Water Act

A decision is "against the law" within the meaning of C.C.P. § 657(6), as well as C.C.P. § 663, where it is based on an erroneous legal theory or where the evidence is insufficient in law and without conflict on any material point. C.C.P. § 663(1); *Hoffman-Haag v. Transamerica Insurance Co.* (1981) 1 Cal.App.4th 10, 15; *In re Marriage of Beilock* (1978) 81 Cal.App.3d 713, 728.

The County's motion for new trial and to set aside and vacate the judgments was directed specifically at Part 2 of the Permit. The superior court's holding that Part 2 does not exceed the requirements established by federal law was erroneous as a matter of law. In support of this holding, the superior court said that "the Permit is consistent with the Clean Water Act with respect to the MEP standard and other Phase I issues . . ." (41 App. 10813).

The question, however, is not whether Part 2 of the Permit is consistent with federal law; if it was inconsistent, it could not be imposed. See 33 U.S.C. § 1342(b); Water Code § 13372. See generally, *City of Burbank*, 35 Cal. 4th at 620, 626. Instead, the question is whether Part 2 exceeds that which is required by federal law. If Part 2 does, then the Regional Board must consider the Section 13241 factors before Part 2 is imposed. *Id.* at 627.

As discussed above, Part 2.1's requirement that the discharge not cause or contribute to a violation of water quality standards is not required

by the Clean Water Act. *Defenders of Wildlife*, supra, 191 F.3d at 1165.

As the court said in *Defenders*:

[T]he statute unambiguously demonstrates that Congress did not require municipal storm-sewer discharges to comply strictly with 33 U.S.C. § 1311(b)(1)(C).

Id. Instead, if EPA or a state includes the Part 2 language in a permit, it is not because the Clean Water Act requires it, but as a matter of discretion.

Id. at 1166.

This principle is recognized by the State Board in its own administrative decisions. “The court in [*Defenders*] held that the Clean Water Act provisions regarding stormwater permits did not require that municipal storm-sewer discharge permits insure strict compliance with water quality standards, unlike other permits.” *In the Matter of Petition of Building Industry Association of San Diego County and Western Petroleum Association*, State Board Order No. WQ 2001-15 at 6.

Similarly, Part 2.2, the Permit requirement that municipal stormwater discharges not contribute to a condition of nuisance, also is not required by the Clean Water Act. This provision comes directly from California’s Porter-Cologne Act, Water Code § 13263.

Accordingly, neither Part 2.1 nor Part 2.2 of the Permit is required by the Clean Water Act; these parts go beyond the requirements of the Act. Therefore, in accordance with the Supreme Court’s decision in *City of Burbank*, the Regional Board was required to consider economics and other Water Code § 13241 factors before adopting Parts 2.1 and 2.2.

3. **The Superior Court’s Finding that the Regional Board had Considered Water Code § 13241 Factors in Adopting Part 2 of the Permit was not Supported by Substantial Evidence.**

Water Code § 13241 sets forth the following factors to be considered by the Regional Board:

- (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 the coordinated control of all factors which affect water quality in the area.
- (d) Economic considerations.
- (e) The need for developing housing within the region.
- (f) The need to develop and use recycled water.

The record is devoid of evidence that the Regional Board considered any of these factors before adopting Part 2 of the Permit. There is a reason for this lack of evidence. Until the Supreme Court's decision in *City of Burbank*, the State Board, which the Regional Board must follow, took the position that the Regional Board was not required to consider Water Code § 13241 factors when issuing a permit. According to the State Board, the Water Code § 13241 factors needed to be considered only when adopting water quality standards themselves. (See 26 AA 6729-30; See *City of Burbank*, 35 Cal.4th at 623.) The Supreme Court explicitly rejected this position with respect to those requirements that exceed the Clean Water Act. 35 Cal.4th at 627.

Thus, at the hearing to adopt the Permit, the Regional Board did not discuss the cost to comply with water quality standards or to avoid causing or contributing to a nuisance. Although economic documentation was submitted with respect to other parts of the Permit, there was no such

documentation submitted that addressed the cost of compliance with Part 2. The other section 13241 factors also were not discussed with respect to Part 2 (R7923-7970).

In its order denying the motions for new trial and to set aside and vacate the judgments, the superior court cited to its Phase II Statement of Decision, and in particular pages 15, 21 and 22 (41 AA 10811). The evidence referenced by the superior court on these pages, however, does not even refer to Part 2. Page 15 contains a discussion of the legal sufficiency of the Permit's general Finding No. E.25 and page 22 contains a general discussion of Section 13421 itself; neither page contains a discussion of, or citation to, specific evidence (37 AA 9765, 9771). Pages 22 and 23 set forth evidence of economic considerations with respect to Parts 4.C, 4.D, and 4.E of the Permit, but not Part 2 (37 AA 9772-73). The fact sheet that the superior court cites on page 22 of its Statement of Decision sets forth the benefits of the stormwater program in general (R8039, R8073), not the cost of complying with Part 2. The superior court's reference to economic evidence submitted by the *City of Arcadia* petitioners (41 AA 10688-89; 10811) likewise related to other parts of the Permit, and not Parts 2.1 and 2.2.

The superior court held that the Regional Board was not required to undertake a separate Section 13241 inquiry as to discrete portions of the Permit (41 AA 10811). The Regional Board was required, however, to do so with respect to those portions that exceed federal requirements. That is precisely the holding in *City of Burbank*. 35 Cal.4th at 627.

The superior court further held that, even if a discrete inquiry was required, the Regional Board was not required to particularize its findings with respect to that inquiry (41 AA 10811). To the contrary, the Regional Board was required to adopt findings sufficiently specific so as to apprise a reviewing court of the basis of the Regional Board's action. *Topanga Ass'n*

For A Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 514. The findings must bridge the analytic gap between the raw evidence and the ultimate decision and order. *Id.* See also *California Aviation Council v. City of Ceres* (1992) 9 Cal.App.4th 1384, 1392.

The Permit contains no such findings that meet this standard. It contains only Finding No. E.25, which states that the Regional Board had "considered the requirements of Section 13263 and 13241 . . ." (18 AA 4699). This conclusory finding does not state whether it considered these requirements for any one particular section of the Permit, and certainly does not state that it considered these factors with regard to Part 2. This general finding is insufficient to demonstrate that the Regional Board met the requirements set forth in *City of Burbank*.¹⁹

Finally, the superior court held that the motion to vacate the judgment pursuant to Code of Civil Procedure § 663 was improper because the County was requesting the court to reconsider the evidence (41 AA 10808-9). To the contrary, the County was not requesting the court to reconsider the evidence. Here, the administrative record contained no evidence to support a finding that the Regional Board considered economics or other section 13241 factors before adopting Part 2. Where the administrative record contains no evidence, the evidence is without conflict. The issue then becomes an issue of law, appropriate for resolution under Code of Civil Procedure § 663.

In sum, there is no substantial evidence to support the superior court's finding that the Regional Board considered cost or any other section

¹⁹ The superior court stated that the petitioners had listed "many permit requirements" and had failed to show how they exceeded federal requirements (41 AA 10813). The County's motion, however, was directed solely towards Parts 2.1 and 2.2 of the Permit and, contrary to the court's statement, the County's motion specifically addressed how and why Part 2 exceeded federal requirements (39 AA 10170-86).

13241 factor with respect to Part 2 of the Permit. The superior court erred in denying the County's motions for new trial and to set aside and vacate the judgment.

C. The Superior Court Erred In Holding that the Regional Board Could Go Beyond the MEP Standard

The County requested the superior court to set aside Part 2 of the Permit to the extent it authorizes the Regional Board to order programs that go beyond the MEP Standard, *i.e.*, programs that are not technically feasible or cost effective (14 AA 3523-24). The superior court denied the County's request, holding that the Regional Board had the discretion to order programs that go beyond MEP (37 AA 9734, 9736). In doing so, the superior court followed the Fourth Appellate District's decision in *BIA*, 124 Cal.App.4th 866.

The superior court's holding was error. *BIA* is distinguishable because it involved a permit with a different, less stringent definition of what constitutes MEP. To the extent that this Court finds that the *BIA* decision is not distinguishable, the County respectfully suggests that the decision is wrong as a matter of law and should not be followed.

1. *BIA* is Distinguishable

As discussed above in Section V.A.7. *supra*, in *BIA*, the Building Industry Association, an organization representing building industry interests, challenged the San Diego County stormwater permit. One basis for that challenge was that the permit authorized the San Diego Regional Board to order programs that went beyond that permit's definition of MEP. 124 Cal.App. 4th at 889.

Critically, although both the San Diego and Los Angeles permits use the term "Maximum Extent Practicable," each permit defines that term very differently. As the Fourth District noted in *BIA*, MEP is not defined in the Clean Water Act or applicable regulations. *Id.* at 889. The court described

it as a "highly flexible concept that depends on balancing numerous factors, including the particular control's technical feasibility, cost, public acceptance, regulatory compliance, and effectiveness." *Id.*

The San Diego permit defined MEP as a standard that
considers economics and is generally, but not
necessarily, *less stringent than BAT.*"

Id. (emphasis added). BAT is the acronym for "best available technology economically achievable," which is the standard that industrial discharges must meet pursuant to 33 U.S.C. § 1311(b)(2)(A). As the Fourth District recognized, BAT is a technology-based standard that focuses on reducing pollutants by a combination of treatment and best management practices. *Id.* at 889; *Texas Oil & Gas Ass'n v. U.S. E.P.A.* (5th Cir. 1998) 161 F.3d 923, 928. Thus, the San Diego MEP standard was a standard that required less than what was technologically and economically achievable for industrial and other non-municipal dischargers. The Fourth District found that it was reasonable, therefore, for the San Diego Regional Board to have the discretion to require municipalities to go above the San Diego's permit's MEP standard and at least meet the BAT standard. *Id.*

The Los Angeles Permit defines MEP much differently. Here, MEP is already defined to be that which is technically feasible and cost effective (18 AA 4744; R007511 (State Board Order No. WQ2000-11)). Thus, to say that the Regional Board has the discretion to order programs that go beyond MEP is to say that it can order programs that go beyond that which is *technically feasible and cost effective*. In other words, the discretion that the Fourth District said resided in the San Diego Regional Board to order San Diego municipalities to implement technology-based programs equivalent to BAT is already a requirement of the Los Angeles Permit's MEP definition. For this reason, although the *BIA* case uses the same term, "MEP," it addresses a very different issue.

2. To Hold That the Regional Board Can Order Programs That Go Beyond the Los Angeles Permit's Definition of MEP is to Hold That an Unelected Body can Order the Expenditure of Public Funds on Programs That are Not Technically Feasible and Not Cost Effective

A municipality is governed by elected supervisors, mayors, councilpersons, and other officials. These officials are faced with making funding decisions, deciding whether their resources should be spent on police, fire, libraries, parks, health and other general welfare programs. Ultimately, each of these officials must answer to the people.

The Regional Board is not an elected body. Its members are appointed by the Governor. The Regional Board does not have to make the choices made by the municipalities. It does not have to vote on the taxes necessary to pay for the programs that it requires or choose between competing needs. Nevertheless, under the superior court's holding, the Regional Board could order municipalities to pay for programs that are not technically feasible and cost effective, reducing the funds available for other programs.

The County submits that Congress did not give the Regional Board this authority. Congress provided that permits for municipal storm sewer discharges:

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.

33 U.S.C. § 1342(p)(3)(B)(iii).

The County submits that the first phrase of this subsection is the governing phrase: that permits "shall require controls to reduce the

discharge of pollutants to the maximum extent practicable." The remainder of the statute is an enumeration, by way of example, of such controls.

The superior court, on the other hand, held that the final phrase, "such other provisions as the Administrator or the State determines appropriate for the control of such pollutants" is the governing phrase, and authorizes the Regional Board to require controls even if these controls go beyond the MEP standard, *i.e.*, are not technically feasible and cost effective.

There are several reasons why the superior court's construction was in error:

1. It does not comport with the plain language of the statute.
 2. It turns "maximum" into "minimum."
 3. It fails to give full effect to the statute, rendering the first portion of 33 U.S.C. § 1342 (p)(3)(B)(iii) superfluous and failing to provide a standard for review.
 4. It is not supported by the legislative history.
 5. It is not supported by the case law.
 6. It does not comport with the purpose of the statute and Congress' differential treatment of municipal and non-municipal permittees.
- 3. The Plain Meaning of Section 1342(p)(3)(B) Supports the County's Construction That MEP Controls.**

In construing a statute, the Court must ascertain the intent of the legislature so as to effectuate the purpose of the law. *People v. Coronado* (1995) 12 Cal.4th 145, 151; *Dyna-Med, Inc. v. Fair Employment & Housing Comm'n* (1987) 43 Cal.3d 1379, 1386. In determining that intent, the Court must first look to the plain meaning of the language itself. *Id.*

Here, the plain language of Section 1342(p)(3)(B)(iii) first sets forth that controls must reduce the discharge of pollutants to the MEP, and then enumerates what those controls can include. To reflect the fact that the enumerated list of categories is not exhaustive, the end of the statute includes a catch-all provision that gives EPA or the State the discretion to identify additional MEP controls. The catch-all provision, however, is dependent, not independent, of the first phrase of the statute.

This construction is consistent with well-established doctrines of statutory construction. The doctrine of *ejusdem generis* (“of the same kind”) provides that, where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. *Dyna-Med, supra*, 43 Cal.3d at 1391 n.12. This doctrine is based on the reasoning that “if the Legislature intends a general word to be used in its unrestricted sense, it does not also offer as examples peculiar things or classes of things since those descriptions then would be a surplusage.” *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 141. The “general term or category is ‘restricted to those things that are similar to those which are enumerated specifically.’” *Id.* (citations omitted).

In this case, the list of specific controls in Section 1342(p)(3)(B)(iii) (“management practices, control techniques,” etc.) is followed by the final, more general phrase “such other provisions as the Administrator or the State determines appropriate.” Applying *ejusdem generis*, the latter, more general phrase must be interpreted as referring only to controls within the same nature or class as those enumerated in the more specific preceding phrases. In other words, “other provisions as the Administrator or the State determines appropriate” must still fall within the category of “controls to reduce the discharge of pollutants to the maximum extent practicable.”

A second doctrine of statutory construction, *noscitur a sociis* ("known by its associates"), also is applicable here. Under this doctrine, a statutory clause must be interpreted in light of the other terms included in that clause and the overriding purpose of the clause as a whole. *Dyna-Med*, 43 Cal.3d at 1391 n.14; *English v. IKON Business Solutions, Inc.* (2002) 94 Cal.App.4th 130, 145. Utilizing this doctrine of statutory construction, courts "determine the meaning of a particular statutory term by reference to the characteristics that it shares with other things of the same kind, class, or nature which are catalogued with it in the enactment." *Coors Brewing Co. v. Stroh* (2001) 86 Cal.App.4th 768, 778. "In accordance with this principle of construction, a court will adopt a restrictive meaning of a listed item if acceptance of a more expansive meaning would make other items in the list unnecessary or redundant" *English*, 94 Cal.App.4th at 145.²⁰

Section 1342(p)(3)(B)(iii) identifies six different types of controls: (1) management practices; (2) control techniques; (3) system methods; (4) design methods; (5) engineering methods; and (6) "such other provisions as the Administrator of the State determines appropriate for the control of such pollutants." There is no dispute that the first five are examples of controls to reduce the discharge of pollutants to MEP. Applying *noscitur a sociis*, the sixth category must be construed as sharing the same characteristics as the previous five. Thus, the plain meaning of Section

²⁰ In *BIA*, the court rejected these statutory interpretation doctrines without explanation, finding that as a grammatical matter it is more appropriate to treat the last phrase as independent. To the contrary, it is just as grammatical to interpret the last phrase as being a subset of MEP, i.e., MEP includes "management practices," "control techniques and system design and engineering methods," and "such other provisions as the Administrator or the State determines appropriate. . . ." In any event, statutes are not always models of grammatical correctness. It is the intent of the legislature that controls. *Dyna-Med*, 43 Cal.3d at 1386.

1342(p)(3)(B) requires that any "other provisions that the Administrator the State determines appropriate" shall comply with MEP.

4. The Superior Court's Construction Would Turn "Maximum" into "Minimum."

In construing the words of a statute, a reviewing court must give the words their usual, ordinary meaning, according significance, if possible, to every word, phrase and sentence. *Dyna-Med*, 43 Cal.3d at 1386-87. The superior court's construction of Section 1342(p)(3)(b)(iii) ignores this requirement.

According to the superior court's construction, while all permits must at least require controls to reduce the discharge of pollutants to the maximum extent practicable, the Regional Board can go beyond that requirement if it determines that additional controls are appropriate. Under this construction, then, controls to reduce the discharge of pollutants to the maximum extent practicable are the *minimum* standard of controls required in a municipal permit. This construction thus turns "maximum" into "minimum." Such a construction certainly does not give the language in Section 1342(p)(3)(B) its usual, ordinary meaning.

5. The Superior Court's Construction Would Render the First Part of Section 1342(p)(3)(B)(iii) Superfluous and Provides No Standard for Review

Closely related to the principle that a statute's language is to be given its usual and ordinary meaning is the principle that the statutory construction must, if possible, give meaning to every word, phrase and sentence. Any construction that renders some words surplusage is to be avoided. *Dyna-Med*, 43 Cal.3d at 1387.

The superior court's construction creates just such surplusage. If one construes the last phrase of Section 1342(p)(3)(B)(iii) to allow the Regional Board to require any controls that it determines appropriate,

regardless of practicability, then the rest of the section, including the MEP standard, is rendered meaningless. There would be no reason to reference controls that reduce pollutants to the MEP, as these controls would be a subset of the universe of controls that the Regional Board could determine to be appropriate in any event. In other words, if the last phrase governed, then the statute could have been just as easily written that permits for discharges from municipal storm sewers "shall require such controls as the Administrator or the State determines appropriate," omitting everything in between.

In addition, such construction provides no standard against which the Regional Board's Order can be measured. If the MEP standard controls, then a court has a standard against which a Regional Board order can be reviewed. For example, as to the Los Angeles Permit, does the Permit require programs that are technically feasible and cost effective?

On the other hand, if the "such other provisions as the Administrator or the State determines appropriate" is the governing phrase, then a court has no standard against which the Permit can be measured. A court is left to determining whether the Permit is "appropriate." Such a standard would be illusory, allowing a court in each case to apply its own view of appropriateness. Congress did not intend to enact a statute that would have this result.

6. The Legislative History Demonstrates that "Such Other Provisions" is a Subset of MEP

During the 1987 debate in the United States Senate, Senator Durenberger, co-sponsor of the Clean Water Act amendments, addressed the MEP standard.²¹ In an important two-sentence statement placed in the

²¹ The Court may rely on testimony from the Senate floor to determine the legislative intent of Congress. *City of Malibu v. Santa Monica Mountains Conservancy* (2002) 98 Cal. App. 4th 1379, 1386 (court relied on floor

Congressional Record, Senator Durenberger in the first sentence established that MEP was the governing standard and in the second sentence described the controls that would constitute MEP:

In addition, any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 2 years from permit issuance and shall require controls to reduce the discharge of pollutants to the maximum extent practicable. *Such controls* include management practices, control techniques and systems, design and engineering methods, and such other provisions, as the Administrator determines appropriate for the control of pollutants in the stormwater discharge.

Cong. Rec., 100th Cong. Senate Debates, Jan. 14, 1987, at 1280 (testimony of Senator Durenberger) (emphasis added).

Senator Durenberger's first sentence refers to "controls" to reduce the discharge of pollutants to MEP. The second sentence begins with "[s]uch controls" followed by the enumeration of such controls, including "other provisions as the Administrator determines appropriate." As a matter of simple syntax, "such controls," of which "other provisions" is a subset, refers back the MEP controls described in the first sentence. Thus, the Congressional cosponsor of this provision indicated Congress' intent that the list of controls set forth in this subsection, including "such other provisions as the Administrator determines appropriate," be subject to the MEP standard.

7. Case Law, including *Defenders of Wildlife*, Supports the County's Construction

Case law also supports the County's construction of Section 1342(p)(3)(B)(iii). As discussed above, in *Defenders of Wildlife*, the Ninth Circuit interpreted the meaning of this statute. The court found that Congress expressly required industrial stormwater discharges to comply

statements by legislator to determine legislative intent).

with 33 U.S.C. § 1311, and explicitly chose not to include a similar provision for municipal stormwater discharges. *Id.* at 1164-1165.

The Ninth Circuit then proceeded, at the request of an intervenor, to consider whether EPA had discretion to impose strict compliance with state water quality standards. The Ninth Circuit said that EPA or state has the discretion to require such compliance. In doing so, however, the Ninth Circuit was not faced with, and did not address the question of whether, EPA or a state could require compliance with water quality standards if such compliance requires programs that exceed the MEP standard.

To the contrary, the Ninth Circuit's reasoning indicates that EPA or a state would not have such discretion if to do so would require programs that go beyond the MEP standard. In reaching its decision, the Ninth Circuit said in *Defenders of Wildlife*, "this court generally refuses to interpret a statute in a way that renders a provision superfluous." 191 F.3d at 1165. Other cases, although also not directly presented with the issue, similarly indicate that discharges are governed by the MEP standard. In *Environmental Defense Center, Inc. v. United States Environmental Protection Agency* (9th Cir. 2003) 344 F.3d 832, the Ninth Circuit reviewed a rule adopted by EPA to address municipal stormwater permits for small municipal storm-sewer systems. In discussing the language of Section 1342(p), the court on several occasions recognized that the appropriate standard to be applied in municipal stormwater permits was the requirement that the permittee "require controls to reduce the discharge of pollutants to the Maximum Extent Practicable." *Id.* at 852, 854.

8. The Superior Court's Construction Does Not Comport With The Purpose of Section 1342(p)

Finally, the County's construction comports with the purpose of section 1342(p). As discussed above, Congress recognized that municipalities are in a very different position from industrial or commercial

dischargers; municipalities neither create the stormwater nor the pollutants that are contained in it. For this reason, Congress did not require municipalities to ensure that the discharge from municipal storm water sewer systems met all of the controls required of private dischargers. Instead, Congress enacted Section 1342(p)(3)(B)(iii) to reduce pollutants in stormwater while recognizing the unique circumstances faced by municipalities.

The superior court's construction of Section 1342(p)(3)(B) does violence to that purpose. Under the superior court's construction, the Regional Board could treat municipalities like all other NPDES permittees. This is contrary to the very purpose of the Clean Water Act.

D. The Permit Improperly Requires the Permittees to Inspect Certain Facilities

The Permit requires the permittees to inspect certain industrial, commercial and constructions sites (18 AA 4714-19, 4729-32). The County and the Cities requested the superior court to order the Regional Board to set aside those inspection obligations to the extent that they were not authorized by federal law, including the obligation to inspect sites that held state-issued permits for compliance with those permits. The superior court's denial of this request also was error.

The superior court's denial was based largely upon its finding that nothing in the federal regulations relating to inspections *precludes* requiring inspections of facilities with state-issued facilities (37 AA 9767). This reasoning, however, ignores U.S. EPA's careful balancing in the administrative process that gave rise to the regulations.

In adopting the stormwater regulations, EPA took comments from all stakeholder groups, including private industry, public interest advocates and municipalities. After considering those comments, EPA issued

regulations setting forth the scope of the municipalities' obligations. These regulations represented a careful balancing of interests.

In its preamble to the rulemaking that first established the parameters for municipal stormwater permit applications, EPA specifically addressed this balancing. The agency stated that in considering the burden of monitoring (including inspections) of all industrial facilities covered by the general industrial stormwater permit, it realized that this burden could, "for some systems, potentially become the most resource intensive requirements in the municipal permit." 55 Fed. Reg. 48056, November 16, 1990. In light of this burden, the agency "proposed various ways to develop appropriate targeting for monitoring programs." *Id.*

The final version of the federal regulations reflects a "targeting" of a municipality's inspection obligation and reflects the balance that was struck. EPA did not impose an obligation to inspect all industrial, commercial and construction sites. Instead, it required inspection only of those facilities that were significant contributors of pollutants to stormwater.

Thus, the final regulation municipalities to include an inspection program in its proposed management program only required:

(C) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system.

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(3) A description of procedures for identifying priorities for inspecting sites

40 C.F.R. § 122.26(d)(2)(iv)(C) and (D).

In other words, the regulations require a municipality to inspect only (1) municipal landfills; (2) hazardous waste treatment, disposal and recovery facilities; (3) industrial facilities subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986; and (4) industrial facilities that the *municipality* has determined are contributing a "substantial" pollutant loading to the flood control system. Construction sites likewise were to be prioritized.

The superior court's decision, based upon its "nothing precludes" analysis, upsets the careful balance reflected in these regulations. Instead of requiring the Permit to be consistent with this regulation, the superior court allowed the Regional Board to go beyond it, as if the regulatory process had been for naught. The superior court further allowed the Regional Board to place on the County and the other permittees the obligation to inspect industrial and construction facilities for compliance with the General Industrial or General Construction Stormwater Permits issued by the State Board. The superior court's decision was error.

1. The Federal Regulations Relating to Inspection of Industrial and Commercial Facilities

In support of its decision, the superior court cited several regulations. None of them, however, allow the Regional Board to go beyond the balanced approach reflected in 40 C.F.R. § 122.26(d)(2)(iv)(C) and (D). None allowed the Regional Board to shift its responsibility to inspect for compliance with the state-issued General Industrial and General Construction Stormwater Permits to the County and other permittees.

The court's first citation (37 AA 9767) is to subdivisions (A) and (F) of 40 C.F.R. § 122.26(d)(2)(i) (37 AA 9767). These regulations, however,

refer to the *legal authority* that must be possessed by permittees, including the legal authority to adopt municipal stormwater ordinances or permits to control discharges to the flood control system (subdivision (A)) and the legal authority to conduct inspections, monitoring or surveillance (subdivision (F)). Nothing in these regulations requires or even discusses the obligation of permittees to go beyond section 122.26(d)(2)(iv)(C) and (D).

The second set of regulations cited by the superior court, 40 C.F.R. § 122.26(d)(2)(iv)(C)(1) (37 AA 9767), are the regulations cited and discussed above. These regulations require municipal stormwater permit applicants to include in their application provisions to inspect the four specific categories of industrial/commercial facilities identified therein. The Permit already requires inspections of the first three of these categories in a separate section (Part 4.C.2.c, "Other Federally-mandated Facilities" (18 AA 4719)) that was not challenged by the County. The Permit addresses the fourth category, industrial facilities that the *municipality* has determined are contributing a substantial loading to the flood control system, by improperly requiring a much broader inspection of restaurants, automotive service facilities, retail gasoline outlets and automotive dealerships in Part 4.C.2.a (18 AA 4715-18).

The superior court also erred by not ordering the Regional Board to delete the Permit's requirement that the County and the other permittees inspect facilities that held state-issued General Industrial Activity stormwater permits for compliance with those permits. The different classes of industrial facilities required to obtain an industrial activity stormwater permit are set forth in 40 C.F.R. § 122.26(b)(14). These facilities can obtain their own permit or choose to be covered by a general permit. 40 C.F.R. § 122.26 (c)(1). California's general permits are issued by the State Board. See State Board Order No. 97-03-DWQ.

In California, the obligation to inspect facilities that hold a General Industrial Activity stormwater permit is imposed on the regional water quality control boards themselves. In issuing the General Industrial Activity stormwater permit, the State Board ordered: "Following adoption of this general permit, the Regional Water Boards shall enforce its provisions." (Order No. 97-03-DWQ, Finding 13.) The four categories of facilities that 40 C.F.R. § 122.26(d)(2)(iv)(C)(1) requires municipalities to inspect are *separate and distinct* from this much larger category of industrial facilities required to have state-issued General Industrial Activity stormwater permits.

The superior court, citing *Allied Local and Regional Mfrs. Caucus v. EPA* (D.C. Cir. 2000) 215 F.3d 61, 78, stated that "[n]othing in the regulations precludes the inspections of facilities with state-issued permits" (37 AA 9767). This conclusion is, however, inapposite to the point that the County is making: Where an administrative agency – here, EPA – has determined through the rulemaking process under the Administrative Procedures Act, which categories of industrial or commercial facilities will be required to be inspected under a federal stormwater permit, a subordinate state agency – here, the Regional Board – cannot ignore that rulemaking process by deciding that permittees will be required to inspect an entirely larger and different category of facilities.

Under a "nothing precludes" interpretation, a Regional Board would be free to require permittees to inspect any industrial or commercial facility for whatever purpose the Regional Board chose. But that is not the balance struck by EPA when it adopted 40 C.F.R. § 122.26(d)(iv)(C), a position reflected by the statements of U.S. EPA Administrator Christine Todd Whitman in a July 12, 2001 letter to Congressman David Drier: "*The State is responsible for enforcing its general Clean Water Act storm water permits, while a local government permit holder needs to enforce local*

storm water ordinances (which may be similar, but not identical to, the State general permits)" (R3168 (emphasis supplied)).

In its Statement of Decision, the superior court noted also that the obligations under the state-issued General permits are distinct from the obligations under municipal stormwater ordinances, and that the state-issued permits do not preempt local enforcement of local stormwater ordinances (37 AA 9767-68). The County does not disagree with either of these findings. The permittees enforce their own *municipal* stormwater ordinances, and conduct compliance inspections as part of their enforcement of those *municipal* ordinances.²² As Administrator Whitman wrote to Congressman Drier, "a local government permit holder needs to enforce local storm water ordinances . . ." (R3168). Such an obligation, however, does *not* extend to the enforcement of state-issued general industrial permits.

2. Federal Regulations Concerning Construction Sites

This analysis applies with equal force to Parts 4.E.2.b and 4.E.3 of the Permit that require the permittees to inspect all construction sites one acre or greater for compliance with, *inter alia*, the state-issued General Construction permit (18 AA 4729-31). As with industrial facilities, the

²² The Court of Appeals for the Fourth Appellate District, in *City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region*, No. E037079 (January 26, 2006) (slip op.), recently affirmed provisions of a municipal stormwater permit issued to cities in San Bernardino County requiring inspections of industrial, commercial and construction sites "for compliance with and enforcement of local municipal ordinances and permits." Slip op. at 19. *City of Rancho Cucamonga* does not, however, support the superior court's finding that the Regional Board could, through the Permit, require permittees to inspect sites for compliance with state-issued general permits. In fact, the court in *City of Rancho Cucamonga* held: "The Regional Board *may* conduct its own inspections but permittees must still enforce *their own laws* at these sites." (Id.) (emphasis supplied).

state issues General Construction stormwater permits to operators at certain construction sites. See State Board Order No. 99-08-DWQ.²³

As discussed above, the federal regulation governing construction site inspections mandated in the municipal stormwater permit is 40 C.F.R. § 122.26(d)(2)(iv)(D)(3), which requires municipal stormwater permit applicants to describe a program “to implement and maintain structural and non-structural [BMPs] to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system” and which shall include “identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality.”

This regulation does not require permittees to inspect all construction sites possessing a state-issued general construction stormwater permit, but only certain construction sites, prioritized on the nature of the construction activity, topography and soil and receiving water quality characteristics.

E. The Superior Court Erred in Holding that the Parties were Estopped from Challenging Certain Portions of the Permit

Pursuant to California Rule of Court 13(a)(5), the County joins in the arguments relating to estoppel and waiver in the brief filed by appellants Cities of Industry, Santa Clarita and Torrance. The superior court’s holding that parties were estopped from challenging certain terms of the Permit was error.

VI. CONCLUSION

²³ As with the general industrial permit adopted by the State Board, the State Board declared in the general construction permit: “Following adoption of this General Permit, the *RWQCBs* shall enforce the provisions herein including the monitoring and reporting requirements. . . .” (State Board Order No. 99-08-DWQ, Finding 11.) (Emphasis supplied.)

The County's flood control system is one of the largest such systems serving a metropolitan area. The County is committed to reducing the pollutants that enter into and discharge from that system. To that end, the County has implemented several pollution control programs, including programs called for by the Permit.

In adopting the Clean Water Act's stormwater provisions, Congress recognized the unique circumstances faced by municipalities. Congress called for municipalities to reduce pollution in stormwater discharges. It did not, however, authorize state agencies, such as the Regional Board, to order the expenditure of public funds on programs that are neither technically feasible nor cost effective. And, Congress did not authorize the Regional Board to issue a permit that is impossible to comply with.

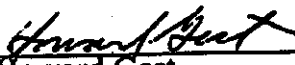
The superior court's judgment should be reversed, and the Regional Board should be ordered to (1) issue a permit with which it is possible to comply, (2) consider Water Code Section 13241 factors before deciding to adopt the terms contained in Part 2 of the Permit, (3) issue a permit that does not require controls that go beyond the to the maximum extent practicable standard; and (4) delete those Permit terms that require inspections that are not authorized by federal law or regulation.

Respectfully submitted,

Dated: February 14, 2006

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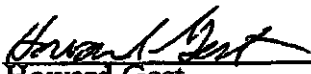
CERTIFICATION OF WORD COUNT

Pursuant to Rule 14(c) of the California Rules of Court, the undersigned counsel certifies that this brief contains 13,588 words, including footnotes, as indicated by the word count of the word processing program used.

Dated: February 14, 2006

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PROOF OF SERVICE

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22nd Floor, Los Angeles, California 90017.

On February 14, 2006, I served the foregoing document, described

**APPELLANTS COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY
FLOOD CONTROL DISTRICTS' OPENING BRIEF**

in this action by placing

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See attached Service List

BY U.S. MAIL: I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

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FEDERAL: I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on February 14, 2006 at Los Angeles, California.


Danette Armstead

SERVICE LIST

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v.
California Regional Water Quality Control Board For The Los Angeles Region, et al.
2nd Civ. Nos. B184034

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EXHIBIT I

***Environmental Groups' Request To Consider Supplemental Evidence And Request For
Administrative Notice***

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COUNTY OF LOS ANGELES et al.,

Plaintiffs and Appellants,

v.

CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD et al.,

Defendants and Respondents.

B184034

(Los Angeles County
Super. Ct. No. BS080792)

APPEAL from an order of the Superior Court of Los Angeles County, Victoria G. Chaney, Judge. Affirmed in part; reversed in part with directions.

Raymond G. Fortner, Jr., Los Angeles County Counsel, Judith A. Fries, Principal Deputy County Counsel, and Burhenn & Gest, Howard Gest, and David W. Burhenn for Plaintiffs and Appellants County of Los Angeles and Los Angeles County Flood Control District.

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Burke, Williams & Sorensen, Leland C. Dolley, Rufus C. Young, and Amy E. Morgan for Plaintiffs and Appellants City of Industry, City of Santa Clarita, and City of Torrance.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part IV (G)-(L).

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Bill Lockyer, Attorney General, Tom Greene, Chief Assistant Attorney General, Mary E. Hackenbracht, Assistant Attorney General, Richard Magasin, Helen G. Arons, and Jennifer Faye Novak, Deputy Attorneys General, for Defendants and Respondents California Regional Water Quality Control Board, Los Angeles Region and State Water Resources Control Board.

David Saul Beckman, Anjali I. Jaiswal, and Michelle S. Mehta, for Defendants and Respondents Natural Resources Defense Council, Santa Monica Baykeeper, and Heal the Bay.

I. INTRODUCTION

Plaintiffs, 32 cities,¹ the County of Los Angeles (the county), the Los Angeles County Flood Control District (the flood control district), the Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality, appeal from a March 24, 2005 judgment in favor of defendants, California Regional Water Quality Control Board, Los Angeles Region (the regional board) and the State Water Resources Control Board (the state board) and intervenors, Natural Resources Defense Council, Inc., Santa Monica Baykeeper, and Heal the Bay. Plaintiffs challenge the legality of the regional board's issuance of Order No. 01-182 adopting the National Pollutant Discharge Elimination System Permit No. CAS004001 (the permit) which is entitled, "Municipal

¹ The following cities have appealed Arcadia, Artesia, Bellflower, Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier.

Storm Water And Urban Runoff Discharges Within The County Of Los Angeles, And The Incorporated Cities Therein, Except The City Of Long Beach.” The December 13, 2001 permit was issued to the county, the flood control district, and 84 incorporated cities in Los Angeles County.

We agree with plaintiffs the regional board was required to conduct environmental review pursuant to Public Resources Code section 21080.5. We disagree with every other contention raised by plaintiffs. Upon issuance of the remittitur, the trial court is to set aside its orders denying the administrative mandate petitions. The trial court is to order the regional board to conduct environmental review pursuant to Public Resources Code section 21080.5.

II. THE PERMIT

A. Overview

The permit was issued pursuant to the obligations imposed by the Clean Water Act which will be discussed in greater detail later in this opinion. The Clean Water Act was originally entitled the Federal Water Pollution Control Act. (62 Stat. 1115; 1948 U.S. Code Cong. & Admin. News at pp. 2215-2220.) For purposes of clarity and consistency, the federal applicable water pollution statutes will collectively be referred to as the Clean Water Act. The 72-page permit is divided into 6 parts. There is an overview and findings followed by: a statement of discharge prohibitions; a listing of receiving water limitations; the Storm Water Quality Management Program; an explanation of special provisions; a set of definitions; and a list of what are characterized as standard provisions. The county, the flood control district, and the 84 cities are designated in the permit as the permittees. The findings and permit are as follows.

B. Findings

The permit found that the county, the flood control district, and the 84 cities discharge and contribute to the release of pollutants from "municipal separate storm sewer systems" (storm drain systems). These discharges were the subject of permits issued by the regional board in 1990 and 1996. The 1996 order served as the National Pollutant Discharge Elimination System permit for the discharge of municipal storm water.

The regional board found that storm drain systems in the county discharged cyanide, indicator bacteria, total dissolved solids, total suspended solids, turbidity, nutrients, total aluminum, dissolved cadmium, copper, lead, total mercury, nickel, zinc, bis(2-ethylhexyl)phthalate, polycyclic aromatic hydrocarbons, diazinon, and chlorpyrifos. According to the regional board, there were certain pollutants present in urban runoff which resulted from sources over which the permittees had no control. Among the runoff sources over which the permittees have no control are polycyclic aromatic hydrocarbons which are the products of internal combustion engines or copper from brake pad wear. Various reports prepared by the regional board, the Los Angeles County Grand Jury, and academic institutions indicated pollutants are threatening to or actually impairing the beneficial uses of water bodies in the Los Angeles region.

The regional board concluded that urbanization: increased the velocity, volume, and duration of water runoff; increased erosion; and adversely affected natural drainages. The regional board found: "The [county] has identified as the seven highest priority industrial and commercial critical source types, (i) wholesale trade (scrap recycling, auto dismantling); (ii) automotive repair/parking; (iii) fabricated metal products; (iv) motor freight; (v) chemical and allied products; (vi) automotive dealers/gas stations; [and] (vii) primary metal products." Also, the regional board concluded "auto repair facilities" contribute "significant concentrations of heavy metals" to storm waters. Moreover, paved surfaces such as those outside fast food establishments or parking lots "are

potential sources of pollutants” in storm water runoff. Further, storm water runoff from retail gas establishments “have concentrations” of heavy metals and hydrocarbons.

The regional board further made findings concerning the background of the permit and its coverage area. The essential components of a Storm Water Management Program are: adequate legal authority; fiscal resources; the actual Storm Water Quality Management Program itself; and a monitoring program. A Storm Water Quality Management Program consists of: a Public Information and Participation Program; an Industrial/Commercial Facilities Program; a Development Planning Program; a Development Construction Program; a Public Agency Activities Program; and an Illicit Connection and Illicit Discharges Elimination Program. The permittees filed a Report of Waste Discharge dated January 31, 2001, which contained a proposed Storm Water Quality Management Program.

C. Prohibited And Allowable Discharges

In the prohibited discharges portion of the permit, the county and the cities were required to “effectively prohibit non-storm water discharges” into their storm sewer systems. This prohibition contains the following exceptions: where the discharge is covered by a National Pollutant Discharge Elimination permit for non-storm water emission; natural springs and rising ground water; flows from riparian habitats or wetlands; stream diversions pursuant to a permit issued by the regional board; “uncontaminated ground water infiltrations” as defined by 40 Code of Federal Regulations, part 35.2005(b)(20) (1990); and waters from emergency fire fighting flows. Another category of permissible discharges were flows incidental to urban activities consisting of: reclaimed and potable landscape irrigation runoff; potable drinking water discharges which comply with the American Water Works Association guidelines for dechlorination and “suspended solids reduction practices”; drains for foundations, footings, and crawl spaces; air conditioning condensate; “dechlorinated/debrominated”

swimming pool discharges; dewatering of lakes and decorative fountains; non-commercial car washing by residents or non-profit organizations; and sidewalk rinsing.

The regional board's executive officer was granted authority to add or remove categories of non-storm water discharges. If one of the foregoing categories was determined to be "a source of pollutants" by the regional board's executive officer, the discharge was to be no longer exempt. The executive officer retained the authority to impose conditions on the city or county to ensure that the discharge was "not a source of pollutants." Also, the executive director was given the authority to impose additional "prohibitions on non-storm water discharges" after considering either of two factors. The first factor the regional board's executive officer could consider is anti-degradation policies. The second factor the regional board's executive officer could consider is the total maximum load an impaired water body can receive and still meet applicable water quality standards and protect beneficial uses. (33 U.S.C. § 1313(d)(1).)

D. Receiving Water Limitations

Receiving waters are defined thusly, "Receiving waters' means all surface water bodies" Discharges from storm sewer systems that "cause or contribute" to violations of "Water Quality Standards" objectives in receiving waters as specified in state and federal water quality plans were prohibited. Storm or non-storm water discharges from storm sewer systems which constitute a nuisance were also prohibited. The term nuisance is defined, "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." In order to comply with the receiving water limitations, the permittees were required to implement control measures in accordance with the

permit. If the Storm Water Quality Management Program did not assure compliance with the receiving water requirements, the permittee was required to: immediately notify the regional board; submit a Receiving Water Limitations Compliance Report that described the best management practices that were currently being used and proposed changes to them; submit an implementation schedule as part of the Receiving Water Limitations Compliance Report; and, after approval by the regional board, promptly implement the new best management practices. If the permittee makes the foregoing changes, even if there were further receiving water discharges beyond those addressed in the Water Limitations Compliance Report, additional changes to the best management practices need not be made unless directed to do so by the regional board.

E. Storm Water Quality Management Program

The permittees were to implement the Storm Water Quality Management Program which meet the standards of 40 Code of Federal Regulations, part 122.26(d)(2) (2000) and reduce the pollutants in storm waters to the maximum extent possible with the use of best management practices. Further, the permittees were required to revise the Storm Water Quality Management Program to comply with specified total daily maximum load allocations. If a permittee modified the countywide Storm Water Quality Management Program, it was required to implement a local management program. Each permittee was required by November 1, 2002, to adopt a storm water and urban runoff ordinance. By December 2, 2002, each permittee was required to certify that it had the requisite legal authority to comply with the permit through adoption of ordinances or municipal code modifications.

The county was designated as the "Principal Permittee" and was given coordination responsibilities of the Storm Water Quality Management Program. Among other things, the county was to convene Watershed Management Committees which were to meet at least four times per year. Each permittee was entitled to have a voting

representative on the committees. The committees were to coordinate and monitor implementation of the Storm Water Quality Management Program. Each permittee was required to designate a technically knowledgeable representative to the appropriate Watershed Management Committees. Each permittee was required to prepare a budget summary of moneys spent on the Storm Water Quality Management Program.

The permit granted each permittee the "necessary legal authority" to prohibit non-storm water discharges into the storm drain system. That authority extended to prohibiting discharges from: illicit connections of all kinds; wash waters from gas stations and automotive service facilities; runoff from mobile cleaning businesses; areas where oil, fluid, or antifreeze was dripping from machinery; storage areas containing hazardous substances; swimming pool waters; washing of toxic materials; and washing impervious surfaces in industrial and commercial areas. The authority also extended to the discharge of concrete and cement laden wash waters and prohibition of dumping of materials into storm drain systems. The legal authority extended to: requiring persons to comply with permittees' ordinances; holding dischargers to storm drain systems accountable; controlling pollutants and their potential contributors; inspecting, watching, and monitoring procedures to insure compliance with the permit including prohibition of illicit discharges into storm drain systems; and requiring the use of best management practices to reduce pollutant discharge into the storm drain systems to the maximum extent possible.

F. Special Provisions

The regional board's executive officer had the power to alter a best management practice under specified circumstances. The county, as the principal permittee, was required to implement a public information and participation program. The program included: marking all storm drains with "no dumping" signs; instituting a county-wide hotline to report illicit discharges and other environmental hazards; public education;

design standard, or both” under specified circumstances. If there is a violation of a General Construction Activity Storm Water Permit, the permittee may refer the violator to the state board.

H. Public Agency Activities Program

The permittees were required to minimize storm water pollution impacts. The requirements extended to: sewer systems; public construction; vehicle related facilities; landscape and recreational facilities; storm drain management; and street maintenance. The permittees were also required to participate in a study concerning possible dry weather discharges and the use of alternative treatment control best management practices.

I. Illicit Discharges And Connections

The permit states, “Permittees shall eliminate all illicit connections and . . . discharges to the storm drain system, and shall document, track, report all such cases” The elimination and reporting of such discharges required: development of an implementation program; by February 3, 2003, the municipalities provide the county with a list of all approved connections in the storm drain system; the county to conduct an annual evaluation of illicit discharges; and training of personnel in the identification and investigation of such discharges. The permittees were to complete the screening of illicit connections as follows: open channels, no later than February 3, 2003; underground pipes by February 1, 2005; and underground pipes with a diameter of 36 inches or greater by December 12, 2006. By December 12, 2006, the permittees were to complete a review of all “permitted connections” to the storm drain system to insure eliminating illicit discharges. Upon receipt of a report an illicit connection, an investigation was to be initiated within 21 days to determine the source and the

every year, requiring 50 percent of all school children to be educated on storm water pollution; assessments of education; and other outreach programs.

Each permittee was required to maintain a database of entities that are "critical sources" of storm water pollution. Each permittee was required to inspect under specified circumstances critical facilities including: restaurants; automotive service businesses; retail gasoline outlets; and automotive dealerships. Further, each permittee was to evaluate best management practices and increase their severity if appropriate. Violations of the Storm Water Quality Management Program were to be investigated within specified time periods. By August 1, 2002, the permittees were to amend their ordinances or municipal codes to implement the standard urban storm water mitigation plans contained in the permit. Special requirements were imposed when discharges occur in environmentally sensitive areas.

Each permittee was required to consider storm water quality impacts as part of their California Environmental Quality Act assessments. Each permittee was required to update its general plan to include "considerations and policies" of watershed and storm water quality and quantity management. The permittees were required to educate employees involved in development planning regarding the permit's requirements.

G. Development Construction Program

The permittees were required to implement programs to "control" runoff from construction sites. Runoff from construction sites was prohibited. Non-storm water runoff from equipment washing on construction sites was to be contained on-site. Special requirements were imposed on construction sites of one acre or greater in area. Additional requirements were imposed on developments which were five acres or larger including securing a General Construction Activity Storm Water Permit. The permit imposed "Numerical Design Criteria" which required that post construction best management practices incorporate "either a volumetric or flow based treatment control

responsible party. Within 180 days, the permittees were required to “ensure termination of the connection” using appropriate enforcement authority. As to illicit discharges, a permittee was required within one business day to respond to a report and clean up a discharge. Illicit discharges were to be investigated as soon as possible and appropriate enforcement action was to be pursued.

III. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS, PROCEDURAL HISTORY, AND STANDARDS OF REVIEW

The present appeal arises from the issuance of the permit. The legal genesis of the National Pollutant Discharge Elimination System permits for the discharge of municipal storm water has previously been described in some detail in other decisions. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 619-621; *City of Rancho Cucamonga v. Regional Water Quality Control Board* (2006) 135 Cal.App.4th 1377, 1380-1381.) In *City of Rancho Cucamonga*, our colleagues in the Division Two of the Fourth Appellate District summarized the complex federal and state relationship: “Part of the Federal Clean Water Act [33 U.S.C. § 1251 et seq.] is the National Pollutant Discharge Elimination System (NPDES), “[t]he primary means” for enforcing effluent limitations and standards under the Clean Water Act. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101.) The NPDES sets out the conditions under which the federal [Environmental Protection Agency] or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. (33 U.S.C. § 1342(a) & (b).) In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law. (§ 13374.)’ (*Burbank, supra*, 35 Cal.4th at p. 621.) [¶] California’s Porter-Cologne Act (Wat. Code, § 13000 et seq.) establishes a statewide program for water quality control. Nine regional boards, overseen by the State Board, administer the program in their respective regions. (Wat. Code, §§ 13140, 13200 et seq., 13240, and 13301.) Water

Code sections 13374 and 13377 authorize the Regional Board to issue federal NPDES permits for five-year periods. (33 U.S.C. § 1342, subd. (b)(1)(B).)” (*City of Rancho Cucamonga v. Regional Water Quality Control Board, supra*, 135 Cal.App.4th at pp. 1380-1381.)

After the board issued the aforementioned December 13, 2001 permit, on January 17, 2003, a series of legal challenges, consisting of the filing administrative mandate and mandate petitions and complaints, were instituted by plaintiffs. Judgments in favor of the regional and state boards were entered on March 24, 2005. After the judgments were entered, notices of appeal were filed on June 21 and 22, 2005. The parties stipulated to the maximum extensions of time to brief the matter as allowed by California Rules of Court, rule 15(b)(1). This court had no authority to deny the stipulated to extensions of time to file briefs. (Cal. Rules of Court, rule 15(b) [“The reviewing court may not shorten a stipulated extension”].) No extension of time request was ever granted by any member of this court. The final reply brief was filed on August 1, 2006. Oral argument was held on September 6, 2006.

There are varying standards of review. Many of the challenges to the content of the permit involve review of the denial of Code of Civil Procedure section 1094.5 administrative mandate petitions filed pursuant to Water Code section 13330, subdivision (b). We review the trial court’s factual findings for substantial evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 824; *Drummey v. State Bd. of Funeral Directors* (1939) 13 Cal.2d 75, 86.) Further, it is presumed the regional board considered the documents before it. (*City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 393-394.) All reasonable doubts are resolved in favor of upholding the regional board’s decision. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 393; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 674.) We (and trial courts) examine the regional board’s interpretation of legal matters utilizing a de novo standard of review. But we defer to the regional board’s expertise in

construing language which is not clearly defined in statutes involving pollutant discharge into storm drain sewer systems. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8; *City of Rancho Cucamonga v. Regional Water Quality Control Board*, *supra*, 135 Cal.App.4th at p. 1384.) Finally, the trial court's denials of plaintiffs' new trial and to enter a new judgment motions and declaratory relief requests are reviewed for an abuse of discretion. (*Ashcraft v. King* (1991) 228 Cal.App.3d 604, 616 [new trial motion]; *Bess v. Park* (1955) 132 Cal.App.2d 49, 52 [declaratory relief].)

IV. DISCUSSION

A. The Jurisdiction of the Regional Board To Issue The Permit

Plaintiffs contend the regional board did not have jurisdiction to issue the permit. Plaintiffs rely on language appearing in the Code of Federal Regulations. For example, the permittees cite to 40 Code of Federal Regulations part 123.1(g)(1) (1998) which states, "NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges."² Further the permittees refer to the following language in 40 Code of Federal Regulations part 123.22(b) (1998), "If more than one agency is responsible for administration of a

² 40 Code of Federal Regulations part 123.1(g)(1) (1998) states in its entirety: "(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of [Clean Water Act]. [National Pollutant Discharge Elimination System] authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before [the Environmental Protection

program, each agency must have statewide jurisdiction over a class of activities.”³ Moreover, 40 Code of Federal Regulations part 123.1(f) (1998) states, “Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.”

Plaintiffs reason that under state law, the regional board does not have statewide jurisdiction. Water Code section 13100 states that the state and regional boards are part of the California Environmental Protection Agency. Water Code section 13200 identifies the scope of jurisdiction of the nine regional boards. The regional board’s limited jurisdiction is defined in Water Code section 13200, subdivision (d).⁴ The powers of the

Agency] will begin formal review. [¶] (2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the [Clean Water Act].”

³ 40 Code of Federal Regulations part 123.22(b) (1998) states in its entirety: “A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a ‘lead agency’ to facilitate communications between [the Environmental Protection Agency] and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program. [¶] (1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program. [¶] (2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. [¶] (3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.”

⁴ Water Code section 13200, subdivision (d) states: “The state is divided, for the purpose of this division, into nine regions: [¶] Los Angeles region, which comprises all

regional boards are set forth in Water Code section 13225 with the caveat that the powers exist "with respect to its region."⁵ Because the regional board is not a statewide agency, plaintiffs argue the permit is void.

This argument has no merit. Effective September 22, 1989, the authority to issue National Pollutant Discharge Elimination System permits was vested by the federal Environmental Protection Agency in the state board. (54 Fed. Reg. 40664, 40665 (Oct. 3, 1989); see *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 875.) The state board is organized into nine regional boards which are part of the California Environmental Protection Agency. (Wat.

basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages."

⁵ Water Code section 13225 states in its entirety: "Each regional board, with respect to its region, shall: [¶] (a) Obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance. [¶] (b) Encourage and assist in self-policing waste disposal programs, and upon application of any person, advise the applicant of the condition to be maintained in any disposal area or receiving waters into which the waste is being discharged. [¶] (c) 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; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom. [¶] (d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws. [¶] (e) Recommend to the state board projects which the regional board considers eligible for any financial assistance which may be available through the state board. [¶] (f) Report to the state board and appropriate local health officer any case of suspected contamination in its region. [¶] (g) File with the state board, at its request, copies of the record of any official action. [¶] (h) Take into consideration the effect of its actions pursuant to this chapter on the California Water Plan adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code and on any other general or coordinated governmental plan looking toward the development, utilization or conservation of the water resources of the state. [¶] (i) Encourage regional planning and action for water quality control."

Code, §§ 174 et seq. 13100; see *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1405.) The nine regional boards are authorized under this state's laws to issue National Pollutant Discharge Elimination System permits. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, *supra*, 124 Cal.4th at p. 875; Wat. Code, § 13374.) The federal Environmental Protection Agency memorandum of agreement with the state board complies with the statewide jurisdiction requirements imposed by the federal regulations. The fact the state board is organized into nine regional boards is legally irrelevant. The state board has statewide jurisdiction.

Further, we agree with the Attorney General that plaintiffs may not challenge the regional board's authority to issue a National Pollutant Elimination System permit in this proceeding. Such an indirect challenge to the board's authority is barred by the *de facto* officer doctrine. The Supreme Court has described the *de facto* officer doctrine, which bars a challenge to an agency's action based on a purported lack of legal authority to act, thusly: "[W]e conclude that under the 'de facto officer' doctrine prior actions of the Commission cannot be set aside on the ground that the appointment of the commissioners who participated in the decision may be vulnerable to constitutional challenge. As this court explained in *In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21, 41-42: 'The de facto doctrine in sustaining official acts is well established. [Given the existence of] a de jure office, "[p]ersons claiming to be public officers while in possession of an office, ostensibly exercising their function lawfully and with the acquiescence of the public, are *de facto* officers. . . . The lawful acts of an officer *de facto*, so far as the rights of third persons are concerned, are, if done within the scope and by the apparent authority of office, as valid and binding as if he were the officer legally elected and qualified for the office and in full possession of it." [Citations.]' (See also *Pickens v. Johnson* (1954) 42 Cal.2d 399, 410 ['There is no question but that . . . the status of a judge *de facto* attached to his action. The office to which he was assigned was a de jure office. By acting under regular assignment under a statute authorizing it he was acting under color of authority as provided by law. His conduct in trying the cases and rendering judgment

therein cannot here be questioned.'].)” (*Marine Forests Soc. v. California Coastal Com.* (2005) 36 Cal.4th 1, 54; original italics.) Here, plaintiffs are challenging the permit by attacking the regional board’s authority. Under these circumstances, this they may not do in what amounts to a licensing proceeding. (*Ibid.*; *In re Redevelopment Plan for Bunker Hill, supra*, 61 Cal.2d at pp. 41-42.)

Finally there is no merit to the contention that because the regional board is not an elected body, it cannot make the financial decisions of the scope entailed by the permit. The board’s powers exist because of: the Clean Water Act which was adopted and amended by elected members of Congress and signed into law by elected presidents; provisions of the Water Code which were enacted by elected legislators and approved by elected governors; and the members, who must have special competence, are appointed by an elected governor and confirmed by the elected State Senate. (Wat. Code, § 13201, subs. (a)-(b).) The democratic processes of government control every aspect of the creation of the board, its legal authority, and the selection of its members. Further, the decisions of regulatory institutions such as the regional board, are entitled by law to a presumption of competence and propriety. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd., supra*, 135 Cal.App.4th at p. 1384; *Communities for a Better Environment v. State Water Resources Control Bd.* (2003) 109 Cal.App.4th 1089, 1104.)

B. The Motions To Strike

Plaintiffs argue that the trial court erroneously granted the regional board’s motions to strike portions of the petition. Plaintiffs contend: the motions to strike were in fact disguised summary adjudication motions; the orders granting the motions to strike did not resolve entire causes of action; and hence, the orders violated Code of Civil Procedure section 437c, subdivision (f)(1). This contention has no merit. Code of Civil Procedure section 436 allows a court to strike portions of a cause of action. (*City of*

Rancho Cucamonga v. Regional Water Quality Control Bd., *supra*, 135 Cal.App.4th at p. 1386; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682-1683.)

C. The State Board's Demurrer

Plaintiffs argue that the trial court erroneously sustained the state board's demurrer to the petitions. The state board contended it was not properly joined as a party to the litigation. A group of plaintiffs alleged the state board required the regional boards to adopt terms and conditions on National Pollutant Discharge Elimination System permits without complying with Government Code sections 11340.5, subdivision (a)⁶ and 11352, subdivision (b) which are part of the Administrative Procedure Act. Plaintiffs had a duty to specifically allege every fact that would give rise to liability by the state board. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790; *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795.) The state board refused to assume jurisdiction over this case. There were thus no specific allegations as to the state board to hold it liable as it engaged in no independent activity. Hence, this contention has no merit and the demurrer was properly sustained. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at p. 1383; *People ex rel Cal. Regional Wat. Quality Control Bd. v. Barry* (1987) 194 Cal.App.3d 158, 177.)

⁶ Government Code sections 11340.5, subdivision (a) states, "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

D. The Declaratory Relief Claims

The trial court sustained the regional board's demurrers to the declaratory relief claims. Plaintiffs argue they were entitled to declaratory relief as to whether: the permittees were required to "go beyond the [maximum extent practicable]" standard to comply with part 2 of the permit which relates to receiving water limitations; part 2 contained a "safe harbor" if the permittees were acting in good faith in implementing best management practices to control excessive discharge of pollutants and nuisance conditions; the requirement in part 4 of the permit that each permittee's general plan and California Environmental Quality Act review take into account storm water runoff is lawful; the regional board was required to consider the economic impact of the proposed permit and its effect on housing; and the regional board was required to perform a "cost/benefit analysis" of the monitoring and reporting program.

When a remedy has been designated by the Legislature to review an administrative action, declaratory relief is unavailable. (*State of California v. Superior Court* (1974) 12 Cal.3d 237, 249; *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 546.) Water Code section 13330, subdivision (b) provides that a regional board order may be reviewed by a Code of Civil Procedure section 1094.5 administrative mandate petition filed within 30 days after the state board denies review. Therefore, the demurrer was correctly sustained to the declaratory relief claims. (*Hill v. City of Manhattan Beach* (1971) 6 Cal.3d 279, 287; *Hostetter v. Alderson* (1952) 38 Cal.2d 499, 500.)

E. The Regional Board Has Not Unlawfully Interfered In Local General Plans And California Environmental Quality Act Review

The permit requires the permittees to update their general plans to include watershed and storm water runoff as considerations in the land use, housing, conservation, and open space planning. Further, the permittees were required to amend

their California Environmental Quality Act process to insure review of the effect of commercial and residential development on storm water runoff. Plaintiffs argue these aspects of the permit violate the separation of powers doctrine. This contention has no merit. As noted, the regional boards are part of a joint state and federal process to enforce the Clean Water Act. (*City of Burbank v. State Water Resources Control Bd.*, *supra*, 35 Cal.4th at pp. 619-620; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at pp. 1380-1381.) The general plan powers and duties of cities and counties are limited by statewide law. (Cal. Const., art. XI, § 7; Gov. Code, § 65030.1; *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 907-908; *Suter v. City of Lafayette* (1997) 57 Cal.App.4th 1109, 1118.) Further, the Clean Water Act supersedes all conflicting state and local pollution laws. (*Arkansas v. Oklahoma* (1992) 503 U.S. 91, 101; *City of Burbank v. State Water Resources Control Bd.*, *supra*, 35 Cal.4th at p. 621.) The state and regional boards are vested with the primary responsibility of controlling water quality. (Wat. Code, § 13001; see *Arkansas v. Oklahoma*, *supra*, 503 U.S. at p. 101; *Hampson v. Superior Court* (1977) 67 Cal.App.3d 472, 484.) Regional boards are explicitly granted the authority to issue orders for purposes of enforcing the federal Clean Water Act. (Wat. Code, § 13377.) 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. (40 C.F.R. § 122.26(d)(2)(iv)(A)(2) (2006).) So long as the regional boards' decisions carry out federal and state water quality mandates resulting from express legislative action as the challenged orders in this case in fact do, no separation of powers issue is present. (*Kugler v. Yocum* (1968) 69 Cal.2d 371, 375-377; *Salmon Trollers Marketing Assn. v. Fullerton* (1981) 124 Cal.App.3d 291, 300.) Given the foregoing, we need not address the waiver, laches, and estoppel contentions of the regional and state boards and the intervenors.

F. Failure To Comply With the California Environmental Quality Act

Plaintiffs argue that the permit issuance process violates provisions of the California Environmental Quality Act. Plaintiffs rely on Water Code section 13389 which provides that chapter 3 of the California Environmental Quality Act does not apply to National Pollutant Discharge Elimination Systems permit proceedings: "Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto." California Code of Regulations, title 23, section 3733 also states, "Environmental documents are not required for adoption of waste discharge requirements under Chapter 5.5, Division 7 of the Water Code, except requirements for new sources as defined in the Federal Water Pollution Control Act. This exemption is in accordance with Water Code Section 13389 which does not apply to the policy provisions of Chapter 1 of CEQA." Plaintiffs argue that the California Environmental Quality Act applies to: the receiving water limitations; the revision of the Storm Water Quality Management Program; and the Development Planning Program. (See *City of Arcadia v. State Water Resources Control Bd.*, *supra*, 135 Cal.App.4th at pp. 1420-1426; *Committee for Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 862.)

We agree that Water Code section 13389 explicitly excludes chapter 3 of the California Environmental Quality Act. But as plaintiffs argue, chapters 1 and 2.6 of the California Environmental Quality Act required the regional board to engage in specified environmental assessments. We agree with the analysis of our Fourth Appellate District, Division One colleagues set forth in *City of Arcadia v. State Water Resources Control Bd.*, *supra*, 135 Cal.App.4th at pages 1420-1430 that regional board permits for basin plans which may have a significant impact on the environment are subject to limited

California Environmental Quality Act review. The Storm Water Quality Management Program portion of the permit imposes considerable requirements on development in residential and business settings including: development and redevelopment planning; conserving natural areas; protecting slopes and channels; altering surface flows of storm waters; and developing flow based treatment control designs to mitigate by infiltrating, filtering, or treating of storm water runoff. Such matters, which can involve significant construction, project development, and urban planning are commonly subject to California Environmental Quality Act review. (Pub. Resources Code, § 21065; Cal. Code Regs., tit. 14, §§ 15378, subd. (a), 15382; *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 639 [removal of firing range]; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1600-1607 [city approval of a subdivision]; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 899-907 [ordinance which could lead to future construction]; *Erven v. Board of Supervisors* (1975) 53 Cal.App.3d 1004, 1012-1014 [road]; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 802-806 [groundwater extraction project].)

But as in *City of Arcadia*, there is no requirement that a full environmental impact report be prepared as would be required for a project subject to chapter 3 of the California Environmental Quality Act. Rather, the regional board must prepare a certification pursuant to Public Resources Code section 21080.5. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 127-128; *City of Arcadia v. State Water Resources Control Bd.*, *supra*, 135 Cal.App.4th at pp. 1421-1426.) Upon issuance of the remittitur, subject to our discussion below concerning potential mootness, the trial court is to direct the regional board to prepare a certification pursuant to Public Resources Code section 21080.5.

There is no merit to the regional board's argument that the permit is not subject to California Environmental Quality Act review. The exemptions to California Environmental Quality Act review authorized by Public Resources Code section 21084,

subdivision (a) and title 14 California Code of Regulations sections 15307 and 15308 are inapplicable.⁷ The Legislature has clearly indicated in Water Code section 13389 that only chapter 3 of the California Environmental Quality Act does not apply to National Pollutant Discharge Elimination System permits. Insofar as title 14 California Code of Regulations sections 15307 and 15308 are in conflict with Water Code section 13389, they are unenforceable. (Gov. Code, § 11342.2 [“Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute”]; *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-206.) In *Wildlife Alive*, the Supreme Court explained the limited scope of the categorical exemption regulations: “Even if section 15107 was intended to cover the commission’s hunting program, it is doubtful that such a categorical exemption is authorized under the statute. We have held that no regulation is valid if its issuance exceeds the scope of the enabling statute. (See Gov. Code, § 11374; *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757.) The secretary is

⁷ Public Resources Code section 21084 states: “The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.” Title 14 California Code of Regulations section 15307 states: “Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.” Title 14 California Code of Regulations section 15308 provides: “Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.”

empowered to exempt only those activities which do not have a significant effect on the environment. (Pub. Resources Code, § 21084.) It follows that where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.” (*Wildlife Alive v. Chickering, supra*, 18 Cal.3d at pp. 205-206.) Here, the statutory and regulatory inconsistency is even more pronounced—Water Code section 13389 makes it clear only chapter 3 of the California Environmental Quality Act does not apply to the “adoption of any waste discharge requirement” which by its very terms would include the permit. To construe title 14 of the California Code of Regulations sections 15307 and 15308 to bar limited environmental review prior to issuance of a National Pollutant Discharge Elimination System permit would conflict with Water Code section 13389.

Further, there is nothing in federal law that excludes this case from California Environmental Quality Act coverage. None of the applicable forms of federal preemption principles apply to Water Code section 13389. There are three different ways a state statute can be preempted by a federal law: where Congress has made its intent known through explicit statutory language; where state law regulates conduct in a field that Congress intended the federal government to occupy exclusively; and where it is impossible for a party to comply with both state and federal requirements or where state law stands as an obstacle to the accomplishment and execution of the full congressional purposes and objectives. (*English v. General Electric Co.* (1990) 496 U.S. 72, 78-79; *Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 923.) None of these factors are present. Congress has never explicitly addressed California’s limited environmental review process in the context of National Pollutant Elimination System permit issuance procedures. The manner in which National Pollutant Elimination System permits are issued by state agencies such as the regional board is not a field occupied exclusively by the federal government—it is a partnership between federal and state governments. (*Arkansas v. Oklahoma, supra*, 503 U.S. at p. 101 *City of Burbank v. State Water Resources Control Bd., supra*, 35 Cal.4th at p. 620.) There is no evidence in

this case limited environmental review conducted pursuant to chapter 2.6 of the California Environmental Quality Act will stand as an obstacle to the accomplishment of congressional objectives. If there is a case where the facts are that limited environmental review pursuant to chapter 2.6 of the California Environmental Quality Act will frustrate Congress's purposes and objectives, then certainly, federal preemption can potentially occur. But in the context of this case, we respectfully conclude that the arguments of the regional and state boards and the intervenors that requiring compliance with chapter 2.6 of the California Environmental Quality Act stands as an obstacle to the full accomplishment and execution of congressional purposes and objectives or that it is impossible to comply with both state and federal law are based on speculation. (*Solorzano v. Superior Court* (1992) 10 Cal.App.4th 1135, 1148 ["mere speculation about a hypothetical conflict is not the stuff of which preemption is made"]; *Consumer Justice Center v. Olympian Labs, Inc.* (2002) 99 Cal.App.4th 1056, 1062 ["preemption cannot be based on a belief in phantoms, i.e., speculation"].)

Finally, contrary to the regional board's contention, there is nothing in the National Environmental Policy Act that requires the permit be excluded from California Environmental Quality Act review. Neither title 33 United States Code section 1342(b) nor the federal regulations speak to California Environmental Quality Act review.

At oral argument we raised the question of whether by the time our remittitur issues, the present permit will have expired. If the present permit is no longer in effect, it would seem that it would be a moot point to require limited environmental review. It is unclear what will happen in the future. The best course of action is to leave this matter in the good hands of the trial court. It is entirely possible the present permit will have to be replaced by another permit by the time our remittitur issues. If so, the trial court is free to conclude it would be moot to require limited environmental review in connection with the present permit and may then deny the mandate petition. (*Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644, 657; *MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.)

[The portions of the opinion that follow, parts IV (G)-(L) are deleted from publication.

See *post* at page 46, where publication is to resume.]

G. Sufficiency Of The Evidence Contentions

1. Overview

Many of plaintiffs' contentions are overtly stated or deftly disguised sufficiency of the evidence arguments. We agree with the intervenors that plaintiffs in making these assertions have failed in every respect to set forth all of the relevant evidence. As such, all evidence sufficiency contentions have been waived. (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749; see *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

2. The reasonableness of the permit requirements

Plaintiffs argue that the permit violates the statutory requirement it be reasonable. Plaintiffs contend that four parts of the permit exceed federal requirements which only require that a permit restrict pollutant discharges to the maximum extent possible. Plaintiffs identify three parts of the permit which exceed the federal maximum extent possible limit and reason as follows. Part 2.1 of the permit, which involves receiving water restrictions, prohibits all water discharges which violate water quality standards or objectives regardless of whether the best management practices are reasonable. Part 2.4, also part of the receiving water restrictions, permits the regional board to adopt best management practices without any reasonableness restriction. Part 3.C requires the permittees to revise their storm water quality management programs in order to

implement the total maximum daily loads for impaired water bodies. As a result, according to plaintiffs, parts 3.G and 4 authorize the regional board to require strict requirements with numeric limits on pollutants which are incorporated into the total maximum daily load restrictions. Because these four parts of the permit exceed federal requirements, plaintiffs argue the permit violates a state law requirement derived from Water Code sections 13000, 13241, and 13263, subdivision (a)⁸ that restrictions on storm water system discharges be reasonable.

⁸ Water Code section 13000 states: "The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state. [¶] The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated 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. [¶] The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy." The portions of Water Code section 13241 upon which plaintiff rely state: "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: [¶] . . . (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. [¶] (d) Economic considerations. [¶] (e) The need for developing housing within the region. [¶] (f) The need to develop and use recycled water." Water Code section 13263, subdivision (a) states: "The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or

These contentions have no merit. To begin with, insofar as these contentions involve sufficiency of the evidence contentions, they are waived because of a failure to set forth all of the applicable evidence. (*Foreman & Clark Corp. v. Fallon, supra*, 3 Cal.3d at p. 881; *State Water Resources Control Bd. Cases, supra*, 136 Cal.App.4th at p. 749.) In any event, regardless of whether the permit imposed requirements beyond what plaintiffs contend is the maximum extent feasible, the regional board has the authority to impose additional restrictions. As the intervenors explain, title 33 United States Code section 1342(p)(3)(B) states in part: "Permits for discharges from municipal storm sewers— [¶] . . . (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 . . . State determines appropriate for the control of such pollutants."

In fact, the regional board had the duty to place limits on the release of pollutants into certain waters. Our colleagues in Division One of the Fourth Appellate District have explained: the Clean Water Act requires that states identify a level of permissible pollution, the "total maximum daily load"; the total maximum daily load must be established at a level to achieve certain water standards; and the National Pollutant Elimination System permits must be consistent with the amount of pollutants described in the state specified total maximum daily load. (*City of Arcadia v. State Water Resources Control Bd., supra*, 135 Cal.App.4th at p. 1404; 33 U.S.C. § 1313(d).) The federal Clean Water Act requires the following, "Except as in compliance with this section and

material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241."

sections . . . [1312, 1316, 1317, 1328, 1342, and 1344] of this Act, the discharge of any pollutant by any person shall be unlawful.” (33 U.S.C. § 1311(a).) In terms of the regional board’s statutory duty in setting a total maximum daily load, the Clean Water Act requires: “Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section [1314(a)(2)] as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards” (33 U.S.C. § 1313(d)(1)(C).) As can be noted, the regional board is permitted to take into account the maximum extent practicable limitation in setting the total maximum daily load. (*City of Arcadia v. State Water Resources Control Bd.*, *supra*, 136 Cal.App.4th at p. 1428.) The regional board’s total maximum daily load specification in this case was entirely consistent with federal water quality law. Nothing in the Water Code can circumvent the foregoing federally imposed requirements as to the calculation of the total maximum daily load. (See *City of Burbank v. State Water Resources Control Bd.*, *supra*, 35 Cal.4th at pp. 618, 626-627.) And the regional board’s authority in setting the total maximum daily load extended to imposing requirements beyond the maximum extent practicable. (*City of Arcadia v. State Water Resources Control Bd.*, *supra*, 135 Cal.App.4th at p. 1428; *Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, *supra*, 124 Cal.App.4th at pp. 885-886.)

There is substantial evidence the permit imposes reasonable pollutant discharge requirements. The regional board had before it the study entitled “Fundamentals of Urban Runoff Management” which detailed the feasibility of the restrictions at issue. In footnote 6 of the trial court’s March 24, 2005 statement of decision are 16 separate studies or analyses that evaluate the reasonableness of the restrictions at issue. Further, as described below, there was a vast array of reports and official papers that addressed the reasonableness issue in varying contexts ranging from economics to housing. Substantial evidence supports the trial court’s finding that the permit’s restrictions on pollutant

discharge are reasonable. It is presumed the regional board examined these reports. (*City of Santa Cruz v. Local Agency Formation Com.*, *supra*, 76 Cal.App.3d at pp. 393-394; see *Laurel Heights Improvement Assn. v. Regents of the University of California*, *supra*, 47 Cal.3d at p. 393.)

There is likewise no merit to the factually unsupported theory of the county and the flood control district that they cannot comply with the permit. The county and the flood control district assert, without citation to any evidence in the record, they cannot comply with the permit thereby rendering it, as matter of law, unreasonable. We agree with the intervenors that there is insufficient facts to permit an evidentiary challenge of the type asserted by the county and the flood control district. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.*, *supra*, 124 Cal.App.4th at p. 888; Cal. Rules of Court, rule 14(a)(1)(C).)

3. Failure to consider the economic effects of the permit and engage in a proper cost benefit analysis

Plaintiffs argue that the regional board failed to consider the economic impact of issuance of the permits. A regional board is authorized to issue a permit which imposes more protective restrictions on waste water discharge than required by the Clean Water Act. (Wat. Code, § 13377.⁹) As noted, Water Code section 13241, subdivision (d) requires that the regional board consider the economic effect including the cost of compliance of the issuance of the permit. (See fn. 6, *supra*.) Plaintiffs argue the permit

⁹ Water Code section 13377 states, "Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance."

imposes conditions more stringent than required by the federal Clean Water Act. Therefore, they reason that the regional board was required to consider the economic effect of the permit. (*City of Burbank v. State Water Resources Control Bd.*, *supra*, 35 Cal.4th at p. 618 [“When, however, a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit *more stringent* than federal law requires, California law allows the board to take into account economic factors, including the wastewater discharger’s cost of compliance” (orig. italics)]; *City of Arcadia v. State Water Resources Control Bd.*, *supra*, 135 Cal.App.4th at pp. 1415-1418 [finding sufficient consideration of economic effect of total daily maximum loads for trash restriction imposed in 2001 permit].) Further, plaintiffs argue that the regional board failed to conduct a cost benefit analysis as required by Water Code sections 13165¹⁰, 13225, subdivision (c)¹¹, 13267, subdivision (b)¹² before imposing monitoring and reporting obligations as part of the permit.

¹⁰ Water Code section 13165 states, “The state board may require any state or local agency to investigate and report on any technical factors involved in water quality control; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.”

¹¹ Water Code section 13225, subdivision (c) states: “Each regional board, with respect to its region, shall: [¶] (c) 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; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom.”

¹² Water Code section 13267, subdivision (b)(1) states: “In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard

These contentions have no merit. To begin with, insofar as plaintiffs argue that there was no substantial evidence these issues were considered, they have waived their opportunity to do so because they failed to set forth all of the documents considered by the regional board. Plaintiffs have failed to detail an extensive array of reports and analysis appearing in the administrative record. (*Foreman & Clark Corp. v. Fallon, supra*, 3 Cal.3d at p. 881; *State Water Resources Control Bd. Cases, supra*, 136 Cal.App.4th at p. 749.)

Nonetheless this contention is without merit. The permit explicitly states it is intended to provide a cost-effective storm water pollution program to the maximum extent possible. The permit applies the same cost-effective analysis to efforts to reduce the flow of pollutants into receiving waters. Moreover, the regional board in its findings referred to a report specifying how the "maximum extent practicable" requirement includes considerations of costs and benefit. The regional board had before it: a study of costs prepared by the Maryland Department of Environment; a 58-page study prepared for Parsons Engineering Service on the costs and benefits of storm water best management practices; the extensive federal Environmental Protection Agency data summary of best management practices and their costs which include programs incorporated into the permit; a federal Environmental Protection Agency fact sheet showing the cost effectiveness of reductions in storm water run-off; a federal Environmental Protection Agency document detailing the economic benefits of run off controls; a 44-page federal Environmental Protection Agency document detailing cost analyses of various best management practices; a 99-page report entitled "Cost Analysis" on storm water programs in the state of Washington; a similar analysis prepared for the Commonwealth of Virginia; a federal Environmental Protection Agency analysis of the economic effects of clean water; a lengthy analysis prepared by the federal

to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

Environmental Protection Agency on the effects of restrictions of runoff on housing values; and an 11-page study entitled, "The Economics of Watershed Protection." It is presumed the regional board examined these reports. (*City of Santa Cruz v. Local Agency Formation Com.*, *supra*, 76 Cal.App.3d at pp. 393-394; see *Laurel Heights Improvement Assn. v. Regents of the University of California*, *supra*, 47 Cal.3d at p. 393.) This constitutes substantial evidence the regional board considered the costs and benefits of implementation of the permit. Finally, for the foregoing reasons, the trial court did to abuse its discretion when it denied the posttrial motions which asserted the regional board did not consider the economic consequences of the permit.

4. Failure to consider the effect of the permit on housing

Plaintiffs argue that the regional board neglected to consider the effect of the permit on the need to develop housing as required by Water Code section 13241, subdivision (e). (See fn. 6, *supra*.) Plaintiffs argue that the Legislature has determined that all state agencies such as the regional board must "facilitate the improvement and development" of affordable housing. (Gov. Code, § 65580, subs. (c)-(d).) Plaintiffs argue: the permit is designed to impose new storm runoff limitations on future residential projects; the Standard Urban Water Mitigation Plan portion of the permit applies to both development and redevelopment projects; the permit requires that runoff mitigation occur on single family residences occupying one acre or more and 10-unit or more housing developments; among the mitigation requirements are retention of runoff and erosion from construction sites; transfers of property were subject to maintenance agreements; and the permit will require a significant amount of land to comply with treatment control best management practices.

Plaintiffs have failed to detail an extensive array of reports and analyses appearing in the administrative record. Thus, the issue of whether there is substantial evidence the regional board considered the effect of the permit on housing has been waived.

(*Foreman & Clark Corp. v. Fallon*, *supra*, 3 Cal.3d at p. 881; *State Water Resources Control Bd. Cases*, *supra*, 136 Cal.App.4th at p. 749.) Nonetheless, there is substantial evidence the regional board considered housing issues prior to issuing the permit. The regional board had before it: the May 16, 2001 expression of concerns by the Building Industry Association; demographic analyses; a scholarly discussion of the effects of environmental regulation and housing availability; the federal Environmental Protection Agency analysis of the potential effects of restrictions of runoff on housing values; a technical analysis of runoff controls on housing design and planning; a National Association of Homebuilders guide for residential storm water runoff; an analysis of site design and watershed management in the context of residential subdivisions; the document entitled, "Storm Water Management in Washington" which discusses the technical requirements for small and large parcel developments; the regional board staff analysis; an analysis of the experiences in Virginia; and an article on additional housing costs resulting from storm water regulation. It is presumed the regional board examined these reports. (*City of Santa Cruz v. Local Agency Formation Com.*, *supra*, 76 Cal.App.3d at pp. 393-394; see *Laurel Heights Improvement Assn. v. Regents of the University of California*, *supra*, 47 Cal.3d at p. 393.) Thus, there is substantial evidence the regional board considered housing related issues before it issued the permit.

H. Improper Specifications Of Design Characteristics.

Plaintiffs argue that the regional board improperly specified the "design or the particular manner" as to how there was to be compliance with waste discharge requirements. Plaintiffs rely on Water Code section 13360, subdivision (a) which states: "No waste discharge requirement or other order of a regional board . . . issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner." Plaintiffs

contend two provisions of the permit violate Water Code section 13360, subdivision (a). First, plaintiffs argue that the permit improperly imposes a series of specific design criteria for “Volumetric Treatment Control” and “Flow based Treatment Control” best management practices. Second, plaintiffs challenge the requirement that some of them place and maintain trash receptacles at transit stops.

These contentions have no merit. As held in *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at page 1389, the federal Clean Water Act authorizes National Pollutant Discharge Elimination Systems permits to set forth specific practices which will restrict polluted storm water runoff. (33 U.S.C. § 1342(a)(1), (p)(3)(B)(iii).) In *City of Rancho Cucamonga*, Associate Justice Barton C. Gaut explained: “Rancho Cucamonga’s reliance on Water Code section 13360 is misplaced because that code section involves enforcement and implementation of state water quality law, (Wat. Code, § 13300 et seq.) not compliance with the Clean Water Act (Wat. Code, § 13370 et seq.) The federal law preempts the state law. (*Burbank*, *supra*, 35 Cal.4th at p. 618.) The Regional Board must comply with federal law requiring detailed conditions for NPDES permits.” (*City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at p. 1389.) Thus, nothing in state law in general or Water Code section 13360 in particular is violated by the specific pollution control requirements imposed on the permittees. We need no address the parties’ remaining contentions concerning trash receptacles.

I. Hearing Related And Due Process Arguments

I. Overview of arguments

Plaintiffs contend that the December 13, 2001 hearing failed to comply with due process requirements in the following particulars: the notice did not comply with the requirements for an adjudicative hearing specified in Government Code section 11425.10, subdivision (a)(2); no sworn testimony was presented nor any documentary evidence admitted into evidence; the permittees were not given the opportunity to present evidence, cross-examine witnesses, or present a rebuttal in accordance with Government Code section 11425.10, subdivision (a) and California Code of Regulations, title 23, sections 648.4 and 648.5; the permit was not based on evidence offered at the hearing in violation of Government Code section 11425.50, subdivision (c) and California Code of Regulations, title 23, sections 648.2 and 648.3; technical and scientific matter was relied upon without complying with California Code of Regulations, title 23, section 648.2; and substantive changes were made to the permit after the hearing was concluded without giving the permittees an opportunity to comment on the amendments; most of the administrative record was never set forth at the hearing and was not identified until four months after the December 13, 2001 hearing.

2. Adequacy of the hearing notice

Plaintiffs contend that they did not receive an adequate notice that an adjudicative hearing would be conducted. As to state law requirements, plaintiffs argue the notice never states an adjudicative hearing was going to be held. Plaintiffs argue: Government Code section 11440.20, subdivision (a)¹³ requires that written notice be given of an

¹³ Government Code section 11440.20, subdivision (a) states: "Service of a writing on, or giving of a notice to, a person in a procedure provided in this chapter is subject to

adjudicatory hearing; the "Notice Of Public Hearing" did not comply with Government Code section 11425.10, subdivision (a)(2);¹⁴ the written notice does not state that what evidence would be relied upon; the notice does not state that there would a waiver of the formal regulatory hearing and evidentiary requirements as permitted by California Code of Regulations, title 23, section 648, subdivision (d)¹⁵; and the written notice did not indicate an informal hearing would be held as permitted by Government Code section 11445.20 et seq. and California Code of Regulations, title 23, section 648.7.¹⁶

the following provisions: [¶] (a) The writing or notice shall be delivered personally or sent by mail or other means to the person at the person's last known address or, if the person is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. If a party is required by statute or regulation to maintain an address with an agency, the party's last known address is the address maintained with the agency."

¹⁴ Government Code section 11425.10, subdivision (a)(2) states: "(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements: [¶] . . . (2) The agency shall make available to the person to which the agency action is directed a copy of the governing procedure, including a statement whether Chapter 5 (commencing with Section 11500) is applicable to the proceeding."

¹⁵ California Code of Regulations title 23, section 648, subdivision (d) states: "(d) Waiver of Nonstatutory Requirements. The presiding officer may waive any requirements in these regulations pertaining to the conduct of adjudicative proceedings including but not limited to the introduction of evidence, the order of proceeding, the examination or cross-examination of witnesses, and the presentation of argument, so long as those requirements are not mandated by state or federal statute or by the state or federal constitutions."

¹⁶ California Code of Regulations, title 23, section 648.7 states: "Unless the hearing notice specifies otherwise, the presiding officer shall have the discretion to determine whether a matter will be heard pursuant to the informal hearing procedures set forth in article 10, commencing with section 11445.20, of chapter 4.5 of the Administrative Procedure Act. [¶] Among the factors that should be considered in making this determination are: [¶] The number of parties, [¶] The number and nature of the written comments received, [¶] The number of interested persons wishing to present oral comments at the hearing, [¶] The complexity and significance of the issues involved, and [¶] The need to create a record in the matter. [¶] An objection by a party, either in writing or at the time of the hearing, to the decision to hold an informal hearing shall be

We agree with the regional board that the December 13, 2001 hearing was an adjudicative, quasi-judicial, proceeding. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at p. 1385; see *Sommerfield v. Helmick* (1997) 57 Cal.App.4th 315, 320.) As an adjudicative proceeding, a National Pollutant Discharge Elimination Systems permit hearing is exempt from the rulemaking procedures of the Administrative Procedures Act. (Gov. Code, § 11352, subd. (b)¹⁷; *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at p. 1385.) Thus, Government Code sections 11400 through 11475.70 and 11513 apply to regional board permit issuance proceedings. (Cal. Code Regs., tit. 23, § 648, subd. (b)¹⁸; *City of Rancho Cucamonga v. Regional Water Quality Bd.*, *supra*, 135 Cal.App.4th at p. 1385.)

The permittees received a document entitled "Notice of Public Hearing" sent by the regional board on September 27, 2001. The notice stated: "The hearing will start at 9:00 a.m. Regional Board's staff will present an overview of the proposed permit. Interested persons are invited to attend and to testify in front of the Regional Board. For the accuracy of the record, comments should also be submitted in writing. The Regional Board may ask questions of staff and persons who testify prior to making a decision on

resolved by the presiding officer before going ahead under the informal procedure. Failure to make a timely objection to the use of informal hearing procedures before those procedures are used will constitute consent to an informal hearing. A matter shall not be heard pursuant to an informal hearing procedure over timely objection by the person to whom agency action is directed unless an informal hearing is authorized under subdivision (a), (b), or (d) of section 11445.20 of the Government Code."

¹⁷ Government Code section 11352, subdivision (b) states: "The following actions are not subject to this chapter: [¶] (b) The issuance . . . of waste discharge requirements and permits pursuant to Sections 13263 and 13377 of the Water Code. . . ."

¹⁸ California Code of Regulations, title 23, section 648, subdivision (b) states: "(b) Incorporation of Applicable Statutes. Except as otherwise provided, all adjudicative proceedings before the State Board, the Regional Boards, or hearing officers or panels appointed by any of those Boards shall be governed by these regulations, chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code."

the adoption of the proposed.” On October 11, 2001, the regional board sent a “Announcement of a Public Hearing and Transmittal of the Tentative Draft—County of Los Angeles Municipal Storm Water NPDES Permit” scheduling the hearing on the permit for November 29, 2001. The October 11, 2001 announcement stated: “Following the consideration of written comments and oral testimony, the Board may take action to adopt tentative Order No. 01-XXX during a public meeting on November 29, 2001. At its discretion, however, the Board may direct further investigation.” The October 11, 2001 announcement: indicated a agenda would be posted on the regional board’s website by November 19, 2001; stated the permittees were operating under a permit which expired on July 30, 2001; contained a summary of the principal changes to be made to the permit that expired on July 30, 2001; referred to an attached staff report; and requested comments to the tentative draft of the proposed permit. Attached to the announcement was the notice of hearing which: identified when and where the hearing would be held; explained where documents pertinent to the hearing could be located; and indicated interested persons could testify and submit comments in writing.

The November 29, 2001 regional board meeting was continued to December 13, 2001 after an unsuccessful effort at achieving settlement through mediation. On November 30, 2001, the regional board gave notice on its website of the December 13, 2001 hearing. The regional board’s meeting agenda posted on its website on December 13, 2001, listed as item No. 10 under the heading “**STORM WATER – NPDES PERMIT RENEWAL**” (original bold and underscore): “Consideration of a proposed renewal of the municipal storm water permit for the County of Los Angeles and incorporated cities therein, except the City of Long Beach. (After a public hearing, the Board will consider renewal of the existing municipal permit for the County and 83 cities.) [¶] [Xavier Swamikannu, 576-6654] . . . Board [¶] Action” (Original italics.) Above the listing of the agenda items, the following appears, “All Board files pertaining to the items on this agenda are hereby made a part of the record submitted to the [regional board] by staff for its consideration prior to action on the related items.” The regional board adopted the

permit at the December 13, 2001 hearing. Plaintiffs through their counsel appeared at the December 13, 2001 hearing.

There is no merit to the state law inadequate notice contention. There was no requirement that the notice state an adjudicative hearing would be held. As a matter of law, an adjudicative hearing would be held in connection with any renewal or issuance of a National Pollutant Discharge Elimination Systems permit. (*City of Rancho Cucamonga v. Regional Water Quality Control Bd.*, *supra*, 135 Cal.App.4th at p. 1385.) Further, the notices complied with the requirements imposed by California Code of Regulations, title 23, section 647.2, subdivisions (a) through (c) and (e).¹⁹

Plaintiffs contend that the foregoing notice was deficient because it violates federal and state laws. Plaintiffs argue that the notice fails to comply with federal law. Plaintiffs rely on the following provisions of 40 Code of Federal Regulations part 124.8 (2001) which states: "(a) A fact sheet shall be prepared for every draft permit The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

¹⁹ California Code of Regulations, title 23, section 647.2, subdivisions (a) through (c) and (e) states: "(a) Purpose. Government Code Section 11125 requires state agencies to provide notice at least one week in advance of any meeting to any person who requests such notice in writing except that emergency meetings may be held with less than one week's notice when such meetings are necessary to discuss unforeseen emergency conditions as defined by published rule of the agency. The purpose of this section is to establish procedures for compliance with Government Code Section 11125 by the State Board and the Regional Boards. [¶] (b) Contents of Meeting Notice. The notice for all meetings of the State Board and Regional Boards shall specify the date, time and location of the meeting and include an agenda listing all items to be considered. The agenda shall include a description of each item, including any proposed action to be taken. [¶] (c) Time of Notice. Notice shall be given at least one week in advance of the meeting. When the notice is mailed, it shall be placed in the mail at least eight days in advance of the meeting. [¶] (e) Distribution. Notice shall be given to all persons directly affected by proceedings on the agenda and to all persons who request in writing such notice. Notice shall be given to any person known to be interested in proceedings on the agenda."

[¶] (b) The fact sheet shall include, when applicable: [¶] . . . (6) A description of the procedures for reaching a final decision on the draft permit including: [¶] . . . (ii) Procedures for requesting a hearing and the nature of that hearing . . .” We agree with the Attorney General that these provisions do not apply to a regional board National Pollutant Discharge Elimination Systems permit renewal and issuance proceedings.

Finally, in terms of the notice issues, plaintiffs argue the permittees’ due process rights were violated. The state and federal due process provisions require that “some form of notice” be given. (*Sommerfield v. Helmick, supra*, 57 Cal.App.4th at p. 320; *B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 954.) The notices that were provided complied with all due process requirements applicable to an adjudicative hearing.

3. Adequacy of the hearing

Plaintiffs contend the proceedings before the regional board were not conducted as a proper adjudicative hearing. Plaintiffs argue they were denied the opportunity to present or rebut evidence. Government Code section 11425.10, subdivision (a)(1) states in part: “(a) The governing procedure by which an agency conducts an adjudicative proceeding is subject to all of the following requirements: [¶] (1) The agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence.” The mode of presentation of evidence at adjudicatory hearing is spelled out in California Code of Regulations, title 23, sections 648.4, subdivision (a) and 648.5.²⁰ Because there was no evidence produced at

²⁰ California Code of Regulations, title 23, section 648.4, subdivision (a) provides: (a) It is the policy of the State and Regional Boards to discourage the introduction of surprise testimony and exhibits. [¶] (b) The hearing notice may require that all parties intending to present evidence at a hearing shall submit the following information to the Board prior to the hearing: the name of each witness whom the party intends to call at the hearing, the subject of each witness’ proposed testimony, the estimated time required by the witness to present direct testimony, and the qualifications of each expert witness. The required information shall be submitted in accordance with the procedure specified in the

hearing notice. [¶] (c) The hearing notice may require that direct testimony be submitted in writing prior to the hearing. Copies of written testimony and exhibits shall be submitted to the Board and to other parties designated by the Board in accordance with provisions of the hearing notice or other written instructions provided by the Board. The hearing notice may require multiple copies of written testimony and other exhibits for use by the Board and Board staff. Copies of general vicinity maps or large, nontechnical photographs generally will not be required to be submitted prior to the hearing. [¶] (d) Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct. Written testimony shall not be read into the record unless allowed by the presiding officer. [¶] (e) Where any of the provisions of this section have not been complied with, the presiding officer may refuse to admit the proposed testimony or the proposed exhibit into evidence, and shall refuse to do so where there is a showing of prejudice to any party or the Board. This rule may be modified where a party demonstrates that compliance would create severe hardship. [¶] (f) Rebuttal testimony generally will not be required to be submitted in writing, nor will rebuttal testimony and exhibits be required to be submitted prior to the start of the hearing." California Code of Regulations, title 23, section 648.5 provides: "a) Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board. Adjudicative proceedings generally will be conducted in the following order except that the chairperson or presiding officer may modify the order for good cause: [¶] (1) An opening statement by the chairperson, presiding member, or hearing officer, summarizing the subject matter and purpose of the hearing; [¶] (2) Identification of all persons wishing to participate in the hearing; [¶] (3) Administration of oath to persons who intend to testify; [¶] (4) Presentation of any exhibits by staff of the State or Regional Board who are assisting the Board or presiding officer; [¶] (5) Presentation of evidence by the parties; [¶] (6) Cross-examination of parties' witnesses by other parties and by Board staff assisting the Board or presiding officer with the hearing; [¶] (7) Any permitted redirect and recross-examination; [¶] (b) Questions from Board members or Board counsel to any party or witness, and procedural motions by any party shall be in order at any time. Redirect and recross-examination may be permitted. [¶] (c) If the Board or the presiding officer has determined that policy statements may be presented during a particular adjudicative proceeding, the presiding officer shall determine an appropriate time for presentation of policy statements. [¶] (d) After conclusion of the presentation of evidence, all parties appearing at the hearing may be allowed to present a closing statement."

the hearing, the permittees argue the findings were inadequate. (*English v. City of Long Beach* (1950) 35 Cal.2d 155, 158; *Southern Cal. Edison Co. v. State Water Resources Control Bd.* (1981) 116 Cal.App.3d 751, 760.)

We have read the transcript of the hearing. Those who wished to address the regional board were placed under oath. Presentations were made by the county, the City of Los Angeles, the Coalition for Practical Regulation, and a council representing the interests of various cities. Other individuals were permitted to present their views. The permittees' counsel made no request to call witnesses or objected to the manner in which the hearing proceeded as is argued on appeal. The permittees' counsel were given an opportunity to be heard. Further, extensive written comments were made by the permittees and their counsel. In light of the extensive notice given to them, if the permittees' counsel had any objections akin to those raised on appeal, they should have asserted them. No due process, statutory, or regulatory violation occurred. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 285-287; Cal. Code Regs., tit. 23, § 648, subd. (d).)

4. Belated findings

Plaintiffs contend that untimely findings were made by the regional board. The changes made without an opportunity and comment were: an amendment to the total daily maximum loads for trash; the insertion of a requirement that complaints referred by the regional board be investigated within one business day; and significant changes to the inspection program. We agree with the Attorney General that the modifications in the permit were not of such gravity that a due process or other violation occurred. The final permit was a logical outgrowth of the draft permit. Hence, there was no violation of any right to notice or a hearing. (See *Natural Resources Defense Council v. U.S. E.P.A.* (9th Cir. 2002) 279 F.3d 1180, 1186 [applying federal notice and hearing provisions in the administrative context]; *Center for Biological Diversity v. Bureau of Land Management* (N.D. Cal. 2006) 422 F.Supp.2d 1115, 1155-1156 [same].)

J. Inspection Requirements

Plaintiffs argue the inspection requirements imposed in the permit are unlawful. The permit requires the permittees to inspect to insure there are no illicit discharges into the storm sewer system and critical sources of pollutants in runoff. We agree with the intervenors—no statute or regulation prohibited the regional board from imposing the inspection requirements. Further, there is federal regulatory authority that required the regional board consider imposing the inspection requirements. (40 C.F.R. 122.26(d), (g) (2000).) This contention has no merit.

K. Propriety Of The Regional Board Considering The Administrative Record In The Long Beach Case

Plaintiffs contend that the regional board should not have considered the administrative record in proceedings involving the 1996 issuance of a National Pollutant Discharge Elimination System permit to the City of Long Beach. According to plaintiffs, the administrative record was prepared in connection with the challenge by the City of Long Beach to the National Pollutant Discharge Elimination System Permit issued in 1996. Plaintiffs assert most of the administrative record in the Long Beach case is unrelated to the present case. Plaintiffs argue that consideration of the Long Beach records: are surprise evidence received in violation of title 23, California Code of Regulations, section 648.4, subdivision (a); violated the requirement that the regional board's presentation of exhibits be followed by the parties' presentation of evidence as required by title 23, California Code of Regulations, section 648.5, subdivisions (a)(4) and (5); and the process for admitting public records by reference pursuant to California Code of Regulations, section 648.3 was violated.

We disagree. The regional board certified the administrative record as including documents relevant to a National Pollutant Discharge Elimination System permit issued for the City of Long Beach. It is presumed the regional board considered the documents pertinent to the Long Beach National Pollutant Discharge Elimination System permit. (*Mason v. Office of Admin. Hearings* (2001) 89 Cal.App.4th 1119, 1131; see *Bar MK Ranches v. Yuetter* (10th Cir. 1993) 994 F.2d 735, 740.) Admissibility of evidence is controlled by Government Code sections 11400 and 11513, subdivision (c). Government Code section 11513, subdivision (c) states: "The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." What is unclear is the standard of judicial review of the regional board's decision to consider the Long Beach National Pollutant Discharge Elimination System permit. It would appear the standard of judicial review is that set forth in Code of Civil Procedure section 1094.5, subdivision (b) whether: the regional board's evidentiary ruling was in excess of jurisdiction; there was a fair trial; or there was any prejudicial abuse of discretion. Insofar as we are examining the trial court's ruling allowing the Long Beach evidence to be part of the record, as with any relevancy issue, we apply an abuse of discretion standard of review. (*People v. Panah* (2005) 35 Cal.4th 395, 474; *People v. Kipp* (2001) 26 Cal.4th 1100, 1123.) Under any standard of review, the Long Beach evidence is relevant. The actions taken in imposing runoff conditions on the second largest city in the county are pertinent to what conditions to impose on the remainder of the county. Finally, there is insufficient evidence to support plaintiffs' surprise contention. There is no evidence that any of the permittees' attorneys were prohibited from examining the entire administrative record prior to the December 13, 2001 hearing.

L. The Trial Court Did Not Abuse Its Discretion In Refusing To Augment The Record

Plaintiffs contend the trial court improperly refused to augment the record to include petitions they had filed with state board. This issue is in essence an issue of relevance which is reviewed for an abuse of discretion. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573, fn. 3; *People v. Panah, supra*, 35 Cal.4th at p. 474; *People v. Kipp, supra*, 26 Cal.4th at p. 1123.) The documents at issue were all prepared after the regional board issued the permit. Without abusing its discretion, the trial court could conclude that the post permit issuance papers were irrelevant. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 250, fn. 7; *People v. Rowland* (1992) 4 Cal.4th 238, 268.)

[The balance of the opinion is to be published.]

V. DISPOSITION

The judgment is reversed. Upon issuance of the remittitur, the trial court is to issue its writ of administrative mandate which solely directs defendant, California Regional Water Quality Control Board, Los Angeles Region, to set aside its permit and conduct limited California Environmental Quality Act review as discussed in the body of this opinion. In exercising its equitable discretion, if plaintiffs' environmental review contentions become moot either when the writ of mandate is issued or on a later date because another permit is issued, the trial court retains the authority to decline to order limited environmental review. All other aspects of the orders denying the administrative mandate petitions, dismissing the complaints, and denying the post trial motions are affirmed. Defendants, California Regional Water Quality Control Board, Los Angeles Region and the State Water Resources Board, are to recover their costs incurred on appeal jointly and severally from plaintiffs, the Cities of Arcadia, Artesia, Bellflower,

Beverly Hills, Carson, Cerritos, Claremont, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Mirada, Lawndale, Monrovia, Norwalk, Paramount, Pico Rivera, Rancho Palos Verdes, Rosemead, Santa Clarita, Santa Fe Springs, Signal Hill, South Pasadena, Torrance, Vernon, Walnut, West Covina, Westlake Village, and Whittier, and the County of Los Angeles, Los Angeles County Flood Control District, Building Industry Legal Defense Fund, and the Construction Industry Coalition on Water Quality.

CERTIFIED FOR PARTIAL PUBLICATION

TURNER, P. J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.