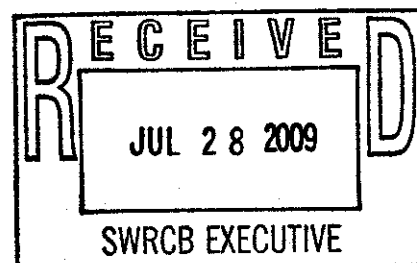




City of Downey

FUTURE UNLIMITED

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comments on Draft Order, File No. A-1780; July 20, 2009 Board Meeting

Dear Ms. Townsend:

These comments are submitted with respect to the draft State Water Resources Control Board Order in the *Matter of the Petition of County of Los Angeles and Los Angeles County Flood Control District*, SWRCB/OCC File A-1780 ("Petition"). The City of Downey is a permittee under the municipal separate storm sewer system (MS4) permit at issue and may become subject to TMDLs if they are incorporated into future permits. We further request that these comments be placed in the record of this action and be forwarded to the Chair and State Board Members prior to the hearing date.

The issues outlined in the Los Angeles County Petition are of critical importance to our City because of the complex, evolving and expensive Best Management Practices (BMPs) that may become required technologies in future TMDLs and MS4 Permits. The TMDL implementation requirements (i.e. developing compliance and monitoring plans, conducting monitoring, designing and installing BMPs) are proving to be far more expensive than were contemplated by the state and federal legislatures. The pollutants identified in this Indicator Bacteria TMDLs are ubiquitous, self replicating, and beyond the direct control of municipalities. In this era of shrinking budgets, governmental agencies need to work together to cost effectively achieve our shared clean water goals.

We wish to emphasize four primary issues of importance raised in the Petition:

First, the City of Downey objects to the incorporation TMDL numeric receiving water limits into our MS4 permits. This approach places municipalities in jeopardy of civil penalties under federal and state law, while ignoring the difficult task of identifying and addressing exceedances due to natural pollutants sources. Furthermore, numeric effluent limits were expressly rejected by the State Board's panel of experts, when they deliberated about the potential for including them in storm water general NPDES permits.

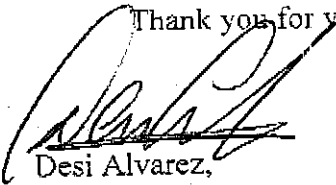
Second, municipal storm water permits should only incorporate wet weather TMDLs that are based on the iterative approach recommended by the United State Environmental Protection Agency in their November 22, 2002 letter. Especially as applied to storm water, iterative BMPs are a rational approach because in many cases the pollutant source is not under the permittees' control and reliable BMP technologies are unavailable. Government agencies, including municipalities, should not be burdened with the threat of civil actions or citizens suits if initial attempts to meet TMDL waste load allocations are unsuccessful. The iterative BMP approach is a better model upon which to deploy BMPs, then monitoring numerically variable parameters for compliance.

Third, the City of Downey urges the State Board to require Regional Boards, incorporating TMDL into municipal storm water permits, to include a finding that the amendment is consistent with the "maximum extent practicable" ("MEP") standard. This finding is legally required and is important because the MEP standard need not be considered when the TMDL is adopted. A TMDL's consistency with the MEP standard must be identified prior to its incorporation into a municipal storm water permit.

Finally, the City asks the Board to reject the joint liability provisions found in the permit amendment before the Board as a result of this Petition. It is fundamentally unfair to hold the responsible majority of cities liable for discharges from a few recalcitrant jurisdictions over which the cooperating agencies have no control. The inclusion of this provision violates State Porter-Cologne Water Quality and Federal Clean Water Acts, which were intended to assess liability only upon the dischargers attributable to specific Permittees, not the conglomeration resulting from all dischargers, permitted and otherwise. Given the resource limitations faced by the Regional and State Board and the glacial pacing of enforcement investigations, there exists a real potential that cooperating compliant agencies would be broadly assessed as pollutant sources or drained of resources in an effort to demonstrate that they are not the source of a specific pollutant.

In conclusion, the City of Downey urges the State Water Resources Control Board to grant the Petition and remand the draft permit amendment back to the Los Angeles Regional Water Quality Board for revision based on the Board's direction.

Thank you for your attention to this matter.



Desi Alvarez,
Deputy City Manager, City of Downey