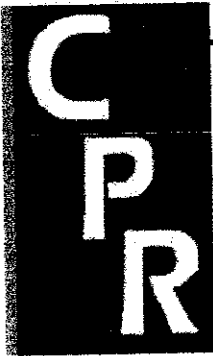


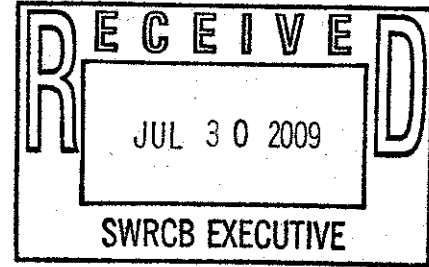
COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"



July 30, 2009

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; August 4, 2009 State Board Meeting

Dear Ms. Townsend:

I am writing on behalf of the Coalition for Practical Regulation (CPR) 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 Coalition is an ad hoc organization of 39 Los Angeles County cities, representing over 1.91 million residents. Our member cities are permittees under the municipal storm water permit at issue in the Petition and will become subject to TMDLs as they are addressed by amendments to Municipal NPDES Permits. The Coalition requests that these comments in support of the Petition be placed in the record of this action and also be forwarded to the Chair and members of the State Board prior to the hearing date.

The issues discussed in the Petition are of critical important to the CPR member cities because of the complex, evolving and expensive technologies that are required to address the pollutants covered by TMDLs. The requirements to implement TMDLs, including developing compliance and monitoring plans, conducting monitoring, and BMP design and installation, are proving to be the single most expensive element of the storm water compliance program. Moreover, requiring strict compliance with waste load allocations ("WLAs") in a TMDL will not only increase these costs, but will further cause the TMDL not to be "reasonably achievable," if achievable at all. The difficulties in compliance are because the pollutants covered by the TMDLs are generated by a number of sources, most of which are beyond any real control by the municipalities.

The Coalition wishes to emphasize the following issues which it believes are critical for the State Board's consideration of this matter before issuing an Order on the pending Petition.

ARCADIA
ARTESIA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER
CARSON
CERRITOS
COMMERCE
COVINA
DIAMOND BAR
DOWNEY
GARDENA
HAWAIIAN GARDENS
INDUSTRY
IRVINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
LAWDALE
MONTEREY PARK
NORWALK
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA
POMONA
RANCHO PALOS VERDES
ROSEMEAD
SANTA FE SPRINGS
SAN GABRIEL
SIERRA MADRE
SIGNAL HILL
SOUTH EL MONTE
SOUTH GATE
SOUTH PASADENA
VERNON
WALNUT
WEST COVINA
WHITTIER

First, CPR strongly objects to the incorporation of WLAs in a TMDL as strict numeric effluent limits into municipal storm water permits. Such an approach could place municipalities in immediate jeopardy of civil penalties under federal and state law and would ignore the difficult and unachievable task of identifying and addressing exceedances of pollutants in urban runoff. This approach was expressly rejected by the State Board's panel of experts formed to consider numeric effluent limits in storm water permits, and similarly over the years, has consistently been rejected by the State Board itself.

Second, any amendment of a municipal storm water permit to account for a TMDL should utilize an iterative Maximum Extent Practicable ("MEP") compliant Best Management Practices ("BMPs") approach. Use of an iterative BMP approach is essential because, in most all cases, the sources of pollutants are not under the permittees' control, and reliable technologies are not available to meet strict numeric limits, *e.g.*, compliance is neither "reasonably" achievable, nor economically achievable. Municipalities should, therefore, not be burdened with the threat of civil penalty actions or citizens' suits if they have acted to comply with these TMDLs by implementing Maximum Extent Practicable BMPs. The approach that has been recognized as the preferred approach for use in Municipal NPDES Permits, is the use of MEP-complaint BMPs. Moreover, in this era of shrinking government budgets, the "reasonableness" and "economic impacts" of the State and Regional Boards' actions must be given due consideration. A balancing of interests is required under State and federal law.

Third, any attempt to require compliance with a TMDL's WLAs in a manner that goes beyond the MEP standard, *i.e.*, that goes beyond the standard required under the Clean Water Act, can only be accomplished after the factors and considerations required under California Water Code sections 13241 and 13000 have first been complied with, including specifically the need to evaluate whether the requirement "could reasonably be achieved," as well as the "economic" impacts of the requirement.

Fourth, because federal law does not require strict compliance with numeric limits, any attempt to impose such a mandate upon a local governmental agency can only be accomplished if this non-federal mandate is first funded by the State. To impose a new, non-federally mandated program upon municipalities that is not funded by the State, would run afoul of the prohibition in the California Constitution against imposing unfunded mandates on local governments.

Fifth, the Draft permit improperly attempts to treat "dry weather" as "non-stormwater," and in doing so, ignores the definition of "storm water" set forth in the Federal Regulations. Moreover, regardless of whether the "discharge" coming out of a municipality's storm drain system is "wet weather" or "dry weather," the MEP standard under the Clean Water Act applies. It should also be recognized that the Coalition is unaware of any adopted Municipal NPDES Permit anywhere in the State of California, outside of the Los Angeles

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Region, where a Regional Board has sought to classify "dry weather" as an illicit discharge, and to regulate "dry weather" runoff through the use of numeric effluent limits, in effect treating municipal discharges the same as a traditional industrial discharges.

Finally, no TMDL should be incorporated into any Municipal NPDES Permit for the Los Angeles Region, until such time as the Orange County Superior Court's recent decision in *Cities of Arcadia v. State Board*, OCSC Case No. 06CC02974, Fourth Appellate District Case No. G041545 (the "Arcadia Case"), has become final and all appeals have been resolved. Because the Superior Court in the *Arcadia Case* found that the State water quality standards (upon which the TMDLs are based) had not been developed in accordance with the requirements of State law, namely, Water Code sections 13241 and 13000, and particularly given the Superior Court's decision that it was improper for the Water Boards to develop water quality standards based on mere "potential" beneficial uses, developing additional TMDLs and/or incorporating such TMDLs into Municipal NPDES Permits until such time as the *Arcadia Case* has been finally resolved, is arbitrary and capricious and will only result in further litigation.

Our Cities are facing the prospect of implementing multiple TMDLs for metals, trash and historic pesticides. A thorough review by the State Board of the significant issues in this petition is a reasonable request. We are convinced that after this review, the Board will conclude that Regional Board has over reached in this case. We respectfully request that the Board grant the Petition and remand the permit amendment back to the Los Angeles Regional Board for hearing and revision.

We appreciate your consideration of this request.

Sincerely,



Larry Forester
City Council Member, City of Signal Hill
CPR Steering Committee

cc: CPR Members
County of Los Angeles Department of Public Works