City of West Hollywood
California 1984

CITY OF WEST HOLLYWOOD

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PAUL AREVALO
CITY MANAGER

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 Water Resources Control Board Meeting*

Dear Ms. Townsend:

I am writing on behalf of the City of West Hollywood 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 is a permittee under the municipal storm water permit at issue in the Petition and will become subject to TMDLs as they are incorporated into the permit. The City 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 importance to the City 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 storm water compliance. The pollutants covered by the TMDLs are generated by a number of sources, most of them beyond the direct control of municipalities.

In this era of shrinking government budgets, both State and local governments need to work together to achieve clean water goals using ever-limited public funds.

The City wishes to emphasize four issues raised by the Petition that are of critical importance to the permittees:

First, the City strongly objects to the incorporation of TMDLs that are expressed as 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 task of identifying and addressing exceedances of pollutants in storm water and 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.

Second, any amendment of a municipal storm water permit to incorporate a TMDL should adopt an iterative approach. Use of an iterative approach is extremely important because in many cases, the sources of pollutants are not under the permittees' control, and reliable technologies are not always available. Municipalities should not be burdened with the threat of civil penalty actions or citizens' suits if initial attempts to meet the TMDL waste load allocations are unsuccessful. A better approach is an iterative one employing BMPs and monitoring to demonstrate compliance.

Third, the City urges the Board to require that, before a Regional Board incorporates a TMDL into a municipal storm water permit, the Regional Board make a finding that the amendment is consistent with the "maximum extent practicable" ("MEP") standard. This finding is legally required and is especially important because MEP is not considered when a TMDL is adopted. A TMDL's consistency with the MEP standard must be considered prior to its incorporation into a municipal storm water permit.

Fourth, the City asks the Board to reject the joint liability provision found in the permit amendment before the Board in this Petition. It is fundamentally unfair to hold one city responsible for discharges from other jurisdictions over which it has no control. In addition, this provision violates both the Porter-Cologne Water Quality Act and the Clean Water Act, which apply liability only to a discharger's own discharges, not those of others.

In conclusion, the City urges the Board to grant the Petition and remand the permit amendment back to the Los Angeles Regional Board for hearing and revision in light of the Board's direction.

Should the Board decide to adopt the proposed Order, the City requests that the discussion in the Order on the bottom of page 10 and top of page 11 in the proposed order be removed, as it speculates how TMDLs will be applied to storm water discharges, which is beyond the scope of the issues raised in the subject Petition.

Thank you for your attention to this matter.

Sincerely,

Paul Arevalo
City Manager
City of West Hollywood