



# CITY OF LA VERNE CITY HALL

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August 15, 2013

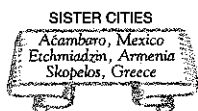
VIA E-MAIL

Ms. Emel G. Wadhvani  
Senior Staff Counsel  
State Water Resources Control Board  
Office of Chief Staff Counsel  
1001 I Street  
P. O. Box 100  
Sacramento, CA 95812-0100  
[ewadhvani@waterboards.ca.gov](mailto:ewadhvani@waterboards.ca.gov)

Subject: SWRCB/OCC FILE A-2236(a) THROUGH (kk) – Comment Letter Regarding  
State Water Board Workshop on Receiving Water Limitations

Dear Ms. Wadhvani:

The City of La Verne appreciates this opportunity to comment on the issue of Receiving Water Limitations (RWL) by responding to the questions posed in the State Water Board's letter of July 8, 2013. Confusion and concern has now been created by recent court rulings in the case of NRDC v. County of Los Angeles, further highlighting the importance of the State Water Board issuing a clarification of its existing RWL policy. The RWL language in the 2012 MS4 Permit for the Coastal Waters of Los Angeles County (except for discharges originating from the City of Long Beach) is almost the same as the RWL language in the 2001 MS4 Permit that led to prolonged litigation and two unfortunate opinions from the Ninth Circuit Court of Appeals, most recently on August 8, 2013. However, the 2012 Permit does provide for compliance options in the watershed management program (WMP) and enhanced watershed management program (EWMP) provisions of the Permit. These modifications to allow for compliance for certain RWL requirements (and other numeric limits) through a WMP or EWMP do not go far enough, however, toward providing municipal Permittees with real and legitimate pathways to compliance with all interim and final numeric limits. Moreover, the new RWL language must be unambiguous. The language must be amended to better reflect the episodic and variable nature of stormwater, reduce the vulnerability to third-party lawsuits, and provide alternative pathways for permit compliance. The language must preclude courts from changing the intent of the permit by separating out interrelated parts for separate review.



General Administration 909/596-8726 • Water Customer Service 909/596-8744 • Parks & Community Services 909/596-8700  
Public Works 909/596-8741 • Finance 909/596-8716 • Community Development 909/596-8706 • Building 909/596-8713  
Police Department 909/596-1913 • Fire Department 909/596-5991 • General Fax 909/596-8737

Your emailed letter of July 8 asked two questions:

1. Is the watershed management program/enhanced watershed management program alternative contained in the Los Angeles MS4 Permit an appropriate approach to revising the receiving water limitations in MS4 permits?
2. If not, what revisions to the watershed management program/enhanced watershed management program alternative of the Los Angeles MS4 Permit would make the approach a viable alternative for receiving water limitations in MS4 permits?

These questions indicate a focus on either the WMP/ EWMP contained in Part VI of the 2012 Permit, or proposed modifications thereof, as the approach for revising the existing RWL language set forth in State Board Order No. 99-05 and used in Part 5A of the Permit, i.e., the language that has led to the recent troubling Ninth Circuit Court of Appeal decisions. Therefore, we will limit our comments to issues related to the two interrelated questions.

The City of La Verne believes that the WMP/EWMP alternative in the Los Angeles MS4 Permit is a viable and productive alternative approach to modifying receiving water limitations in MS4 permits. However, this innovative approach may require adjustments into the traditional manner storm water has been managed previously. The City is aware of the suggested RWL language revisions proposed by the California Stormwater Quality Association (CASQA) and an alternative approach being proposed by various LA Permit petitioning cities. Both have valid points. We agree strongly with CASQA's concerns with the current RWL permit language, as well as its discussion of practical impacts to municipalities and fundamental support for the concept of linking receiving water limitations and other permit requirements to compliance pathways.

Our City also agrees with much of what is contained in Attachment A to CASQA's letter on SWRCB/OCC File A-2236(a) through (kk) that has been circulated among cities for review. However, we are concerned that it lacks adequate protection for cities and believe that it must be amended. In particular, we are concerned that Section E.4.c focuses only on a Permittee's ability to comply with interim and final TMDL requirements. We believe that this section should apply more broadly to the ability to comply with applicable receiving water limitations and discharge prohibitions, as well as interim and final water quality-based effluent limitations (WQBELs) derived from waste load allocations in adopted TMDLs.

We further believe there should be a provision in Section E.5 of CASQA's suggested language that would provide that a permittee would be considered in compliance with receiving water limitations, discharge prohibitions, interim WQBELs, and final WQBELs for portions of watersheds or subwatersheds served by best management practices (BMPs) designed to retain all non-stormwater discharges and all stormwater discharges up to the 85<sup>th</sup> percentile, 24-hour design storm specified in Section E.1.e.

The alternative approach suggested by the petitioning cities focuses on the addition of four subsections to Section VI.C.1 of the 2012 Permit. The first proposed new subsection describes the requirements for any watershed management program, including enhanced watershed management programs, proposed by a Permittee. It also includes a procedure for the approval of alternative BMPs by the Regional Water Board when a Permittee demonstrates, to the satisfaction of the Regional Board in a public meeting, that it is unable to develop sufficient BMPs to achieve timely compliance with one or more receiving water limitations, discharge prohibitions, interim WQBELs, or final WQBELs due to technical infeasibility or substantial hardship. The second proposed new subsection provides that, "A Permittee's compliance with an approved program, including a program utilizing alternative BMPs, shall constitute a Permittee's compliance with the receiving water limitations, Discharge Prohibitions, and TMDLs and related WQBEL provisions set forth in Parts V.A, III.A.1, and VI.E of this Order."

The third section provides a mechanism to cure failures to meet a requirement or a date for its achievement in an approved WMP/EWMP program, or, if needed, a proposed adaptive modification to a program. This section also sets out the requirements to be considered in compliance with a WMP or EWMP in cases where a Permittee has cured a compliance deficiency or is following an approved adaptive management process to cure the deficiency. The fourth suggested new subsection of Section VI.C.1 includes a process for requesting an extension of a program deadline and for approval of the request by the Regional Water Board or the Executive Officer.

Both of these approaches seek to correct the deficiencies in the receiving water limitations in the 2012 Permit, as long as two key elements are addressed:

- The use of the watershed management program as a viable alternative to the current RWL language must apply broadly to receiving water limitations, discharge prohibitions, interim WQBELs, and final WQBELs; and
- There must be a provision that compliance with an approved WMP/EWMP constitutes compliance with receiving water limitations, discharge prohibitions, interim WQBELs, and final WQBELs.

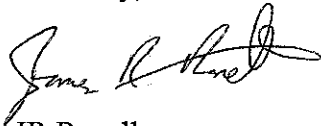
Our City regards these as critical issues. The State Water Board laid out an iterative process for complying with receiving water limitations in its Order 99-05 and has reiterated, in several subsequent orders, that local agencies are to follow an iterative BMP approach to protect water quality and generally are not required to strictly comply with numeric effluent limits.

We understand that some believe that the iterative process has not worked. We think that this is, in part, because the Regional Water Boards have not adequately implemented the process. Either the Permittee or the Regional Water Board may make a determination that discharges are causing or contributing to an exceedance of an applicable water quality standard, whereupon the Permittee is required to submit an RWL Compliance Report that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or

contributing to exceedances of water quality standards. Perhaps the Los Angeles Water Board did not make the necessary determinations because it was underfunded and understaffed, or perhaps it lacked sufficient data to make such determinations. The data problem will be ameliorated by the robust monitoring and reporting requirements in the new Permit. The compliance reporting process should work better in the future, especially with modifications to the Permit to correct the deficiencies in the current RWL language based on the WMP/EWMP options in the Permit.

We look forward to the State Water Board addressing this serious issue as part of addressing the Petitions the Board has received on the Los Angeles MS4 Permit (Order No. R4-2012-0175). Resolving this issue could go a long way toward resolving many petitioners' concerns with the new Permit.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Ranells". The signature is fluid and cursive, with a large initial "J" and "R".

JR Ranells  
Sr. Management Analyst