City of
Santa Monica®

Rod Gould
City Manager

Office of the City Manager
1685 Main Street
PO Box 2200
Santa Monica, CA 90407-2200

November 13, 2012

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

Subject: Comment Letter – Receiving Water Limitations Language Workshop

Dear Ms. Townsend:

The **City of Santa Monica** (City) appreciates the opportunity to provide comment on the issue of municipal stormwater permit receiving water limitations language, which is the subject of a State Water Board workshop to be held on November 20, 2012. The City urges the State Water Board to revise the current receiving water limitations language being used within most state issued stormwater NPDES permits. Revision to the language is necessary because of the way it has been interpreted in the 9th Circuit Court of Appeals decision in the 2011 Los Angeles County vs. NRDC case. The City is extremely concerned that should the State Water Board not modify the language, our City and all other government jurisdictions will be vulnerable to third party law suits and Regional Board enforcement; such has been the case with the cities of Stockton and Malibu.

The City has been actively implementing a watershed management program for 20 years with the passage of the City's 1992 Urban Runoff Pollution Mitigation Ordinance and later Low Impact Development requirements. In addition, the City has implemented the 2001 MS4 requirements for approximately 11 years and a local Watershed Management Plan for the last 6 years. Since FY 2000/2001, the City has spent over $48,000,000 in meeting our permit obligations. The City has been proactive and a regional leader developing programs that address dry weather and stormwater quality issues. Some of these efforts include:

Low Flow Diversions (LFD)
All of the outfall locations, except for one, have been retrofitted with low flow diversions (LFD). At each of these LFDs, all dry weather runoff is intercepted and diverted to the Hyperion Wastewater Treatment Plan in Los Angeles. The one location without a LFD does have a multi-stage treatment system for dry and wet weather flows.

Santa Monica Urban Runoff Recycling Facility (SMURRF)
The Santa Monica Urban Runoff Recycling Facility treats dry weather runoff throughout the year. About 200,000 gallons per day of dry weather runoff from the Pier and Kenter Canyon watersheds are harvested by SMURRF, treated and conveyed for irrigation and other non-potable uses at various City parks and industrial/commercial developments. SMURRF treats about 95% of the City's dry weather runoff; its recycled water replaces 2-3% of our potable demand, making the City more sustainable. Many of our sanitary sewer overflows discharges are captured and treated by SMURRF.

tel: 310 -458-8301 • fax: 310-917-6640

Street and Alley Sweeping

The City maintains a comprehensive street sweeping program. Our fleet of eight vehicles includes rear broom sweepers, vacuum units and combination (vacuum/broom) units. Our street sweeping schedule exceeds the requirements of the LA County MS4 permit; residential is once per week and business is up to six times per week. Alleys are swept on a weekly schedule. A total of 1,400 tons of debris was collected during FY 2010/11.

Catch Basin Cleaning Program

The City's Wastewater Division oversees regular cleaning of 675 City-owned catch basins, 5 Continuous Deflection Separation (CDS) Units, one Vortechnics, one Nutrient Baffle Box, and one StormFilter. The City has a staff of 14 that oversee and perform maintenance on the catch basin and other screening-separation proprietary inventory. CDS units are on the Pier and Pico Kenter storm drain lines and are maintained every 60-90 days. A CDS unit is located at the City Maintenance Yards Facility and is maintained every 90 days. Additional CDS units are located at the Wilshire and Montana storm drain diversion structures and are maintained every 180 days. The amount of debris removed from all catch basins and CDS units from June 1, 2010 through May 31, 2011 was 14.28 tons and 8.43 tons, respectively.

Illicit Connection/Illicit Discharge (IC/ID) Elimination Program

As required by the current MS4 Permit, the City's Water Resources Protection Programs has implemented a program of identifying these types of connections and discharges dating back to 1987. City staff has developed an extensive monitoring program, enforcement response plan, and educational outreach program all designed to assist with eliminating illicit connections and discharges.

In January 2003, the City of Santa Monica screened 4,358 linear feet of open channel storm drains for illicit connections.

In 2006, all mandatory screening of closed storm drain lines was completed. Illicit connection screening utilizing CCTV of all City-owned storm drain lines started on September 8, 2006 and finished on December 5, 2006. The Water Division's Water Resources Protection Programs completed the screening of all City owned storm drain lines. Approximately, 34,000 linear feet of storm drain pipe and hundreds of catch basin/pipe connections were screened. The screening process was completed using CCTV and field inspections to verify all storm drain catch basin connections and any illicit connections. The screening consisted of a process that ensured all pipes connected to the storm drain system were permitted and designed to convey only storm water.

Industrial/Commercial Facilities Program

Much of the progress in reducing illicit connections and discharges is a direct result of the extensive commercial permitting program the City has implemented. There are approximately 800 businesses with permits. Permits require implementation of stormwater BMPs. Much of the focus related to illicit discharges has been directed towards auto and food-related businesses, such as auto repair and restaurants.

Water Resources Division staff thoroughly investigates all discovered or reported illicit connections/discharges to the storm drain system. The illicit connection or discharge is eliminated through enforcement action and redirected, in most cases, to the sanitary sewer system.

Pervious Concrete Alleys and Street Gutters

In 2009, the City commenced a new alley rehabilitation program. The program included the construction of pervious concrete swales in all alleys listed for repair or resurfacing. Constructing pervious concrete alley swales help reduce dry and wet weather runoff. Particularly in commercial districts, where illicit discharges are likely to occur in the alley, pervious swales allow runoff to percolate into the soil rather than discharge into a storm drain and ultimately into the Santa Monica Bay.

The City's annual street resurfacing projects include construction of pervious concrete street gutters. Pervious gutters help prevent dry and wet weather runoff from reaching curb inlets and discharging into the Santa Monica Bay. This year's street resurfacing project constructed about 4,000 L.F. of pervious concrete gutters.

Green Streets

Since 2009, the City has constructed three green streets to help reduce urban runoff into Santa Monica Bay. Not only do these types of streets reduce runoff, but they also enhance aesthetics, reduce heat island effect, remove air pollutants, and increase open space.

Sewer System Management Plan (SSMP)

Consistent with the Statewide General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems adopted by the Board on May 2, 2006, the City enrolled under the Sanitary Sewer Order. As such, the City tracks and reports Sanitary Sewer Overflows (SSO) that occur in the City. As part of the Order requirements, the City has developed a Sewer System Management Plan (SSMP). The SSMP was initially completed in 2009 and has been recently updated in 2012. The SSMP has 11 design elements that describe the important activities the City's Water Resources Division utilizes to manage its 152 miles of sewer pipelines, including the Moss Avenue Pump Station, which make up the sanitary sewer collection system. The SSMP outlines important design elements needed to control SSOs.

As a result of ongoing implementation of the SSMP, which includes preventative maintenance, SSOs have been dramatically reduced. In 2008, there were 49 total SSOs (23 City main line and 26 private laterals); in 2011, there were 16 total (4 City main line and 12 private laterals) for reductions of 67% - total SSOs, 54% - private SSOs and 83% for SSOs related to City main lines. This reduction in SSOs will have a positive impact on reducing bacterial loadings into the Bay.

Watershed Management Plan

In April of 2006, the City began implementation of the Watershed Management Plan (WMP). The WMP was designed to address a comprehensive list of pollutants contained in wet and dry weather runoff. The WMP provides a roadmap for meeting the following goals: reducing urban runoff, reducing urban flooding, increasing water conservation, and increasing recreational opportunities and open space, increase wildlife and marine habitat. The WMP provides a recommended list of prioritized projects and activities that will result in improved urban runoff water quality so that Santa Monica Bay will meet the goals of the Clean Water Act.

Urban Runoff Pollution Mitigation Ordinance

The City's Urban Runoff Pollution Mitigation ordinance has been in effect since 1992. The ordinance was designed to promote sustainable solutions for urban runoff pollution. The requirements of the ordinance are more stringent than the requirements of the County's Standard Urban Stormwater Management Plan (SUSMP) and as a direct result, over 1,600 of the City's 22,922 parcels are outfitted with a structural BMP ranging from treat and release systems to infiltration systems to rainwater harvesting systems. In addition to aggressively reducing stormwater discharges to Santa Monica Bay, the ordinance prohibits irrigation overspray, hosing of paved areas and draining of pools into the storm drain system, among others.

Structural BMPs

City-owned and private development projects are subjected to rigorous urban runoff mitigation requirements. The City's Urban Runoff Pollution Mitigation ordinance resulted in the installation of urban runoff mitigation BMPs on some 425 parcels within the Pico Kenter watershed to date. These projects include an infiltration system at Virginia Avenue Park, a clarifier at the Civic Center Parking Structure and a storm water cistern at the Main Library. This accounts for about 15% of the total parcels within these watersheds. BMPs range from treat and release systems to infiltration systems to rainwater harvesting systems.

The City's runoff ordinance resulted in the installation of stormwater BMPs on 20 parcels within the Pier storm drain watershed to date. This accounts for about 11% of the total parcels within the watershed. BMPs range from treat and release systems to infiltration systems.

In the City's nine other watersheds, over 1,000 additional BMPs have been installed. This accounts for about 68% of total parcels in these watersheds. BMPs range from treat and release to infiltration systems to rainwater harvesting systems.

The City's technical programs and monetary investments, past and present, are summarized below:

- ✓ Two stormwater parcel fees, estimated annual $3.8 million;
- ✓ Over $9 million dollars in grant-funded projects;
- ✓ 20 years and over $48 million of implementing an urban runoff ordinance with low impact development strategies;
- ✓ 11 years implementing NPDES permits;
- ✓ 6 years implementing the City's Watershed Management Plan;
- ✓ Over 1,600 parcels with treatment systems;
- ✓ A Sustainable City Plan that promotes water quality improvements and local water resources; and
- ✓ City spending approximately $400 per parcel on urban runoff management,

And the result is that the City is still not in compliance based upon the Permit's current language. Without the requested change of language, all cities are exposed to litigation despite our best efforts and cooperation with the Regional Board.

Despite the many pro-active measures taken by Santa Monica and the resulting improvement in water quality, the receiving water limitations language in its current form deems our City in violation of our stormwater discharge permit. Notices of violation issued in 2008 and 2009 left the City exposed to penalties, civil liabilities and outside party lawsuits. The receiving water limitations language neither protects municipalities from unnecessary litigation, nor recognizes any good faith effort. The City has always understood that water quality standards and permit compliance would be achieved using an iterative approach, wherein continuing water quality issues would be addressed through a partnership with the Regional Water Quality Control Board to identify actions and opportunities that would resolve the issues. The 9th Circuit Court of Appeals' decision resolutely expresses that such is not the case.

The City respectfully requests the State Water Board reaffirm its policy to allow municipal permittees to comply with water quality standards over time by using Best Management Practices supplemented by the iterative process, and revise the existing receiving water limitations language consistent with an "iterative process" approach. The City believes the first step to developing revised language is to first develop guiding principles for the language. These guiding principles would work to align the receiving water limitations language with the Board's accepted iterative process policy, and as well provide assurance to the Board and interested third parties that agency actions to address water quality issues are effective and timely. The City therefore supports the guiding principles that are being suggested by the California Stormwater Quality Association. These include the following:

The receiving water limitations language must identify an iterative process that:

- Provides enough specificity and accountability so the municipalities understand their responsibility.

- Acknowledges that all pollutants cannot be addressed equally.
  - Pollutants in stormwater discharges that are subject to TMDLs must be prioritized over pollutants that have sporadic and minimal impacts on receiving water. Similarly, the frequency and severity of the impact must be addressed in a prioritized manner.

  - Municipalities are under constant pressure to prioritize their resources, and to obtain the most "bang for the buck." This pressure is evident in practically all aspects of public service, from police to fire to the environment. Thus, a city cannot afford, financially or politically, to address all stormwater issues simultaneously.

- Guides regional board staff (and others) to assess whether permittees are in good faith implementing the iterative process.
  - Given the wide diversity and complexity of pollutants, sources and BMPs, the process must provide a mechanism for the MS4 and the State to agree on a practical implementation plan to satisfy the Permit provision.

- Establishes enough rigor to assure that progress will be made in addressing problematic discharges and protecting water quality.

Conclusion

The Board has an opportunity to ensure that receiving water language is modified so that permittees are protected from enforcement action and third party lawsuits while they are following the iterative process with the Board. Financially challenged permittees need to focus their limited resources on complying with MS4 requirements and other essential public safety challenges instead of defending against MS4 third party lawsuits and Regional Board Notices of Violation.

Santa Monica has been fortunate to have implemented so many watershed protection programs and structural systems to improve water quality entering Santa Monica Bay. The City has an outstanding City Council and management team actively supporting the Watershed Management Plan and MS4 Permit. Most cities are not as fortunate as Santa Monica, vis-à-vis MS4 management and compliance. And even with all that this City has done, the huge investments in human power, technology and monies, exceedences continue. The inclusion of the proposed "safe harbor" language is necessary to enable our City and the other cities of our region to continue the excellent watershed protection work.

The City appreciates the opportunity to comment on the proposed changes to the receiving water limitations language and looks forward to a partnership with the State Water Board that protects and enhances water quality. If you have any questions regarding this report or require additional information, please contact me at your earliest convenience.

Sincerely,

Rod Gould
City Manager