



# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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September 11, 2006

IN REPLY PLEASE  
REFER TO FILE: WM-9

TO: Each Supervisor

FROM: Donald L. Wolfe  
Director of Public Works

### PROPOSED REOPENER OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MUNICIPAL STORMWATER PERMIT

The County is subject to a National Pollutant Discharge Elimination System Municipal Stormwater Permit (NPDES Permit) issued by the Los Angeles Regional Water Quality Control Board (Regional Board). The NPDES Permit covers discharges of urban and stormwater runoff from County facilities and storm drains. The County, Los Angeles County Flood Control District, and 84 cities are copermitees under the NPDES Permit.

The Regional Board will be considering for adoption at its September 14, 2006, hearing a proposal to reopen the NPDES Permit to include a prohibition of nonstormwater flows to Santa Monica Bay containing bacteria in excess of limits specified in the Santa Monica Bay Beaches Dry-Weather Bacteria Total Maximum Daily Load (TMDL). The TMDL sets numeric limits for the number of days that bacteria counts can exceed certain standards at specific points along Santa Monica Bay beaches. For summer-dry weather (April 1 to October 31), the numeric bacteria limit was to be met by July 15, 2006. For winter-dry weather (November 1 to March 31), the numeric bacteria limit must be met by July 15, 2009. While these limits are set forth in the TMDL, the TMDL itself is nonenforceable because it is a standard, not a regulation. The TMDL's limits become enforceable when the Regional Board incorporates these limits into an enforcement mechanism, such as the NPDES Permit, thus subjecting the County and other permit holders to fines and third-party lawsuits should our discharges exceed the TMDL's limits.

In written comments filed on June 20 and September 4, 2006, in close consultation with County Counsel and on behalf of the County and the Flood Control District, Public Works expressed concerns with the reopener of the NPDES Permit for a number of very solid technical and legal reasons. The County has demonstrated to the Regional Board a commitment to meeting bacteria standards at Santa Monica Bay

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beaches, including the construction of 15 low-flow diversions at a total design and construction cost of approximately \$18 million. We have also written the Regional Board to express our desire for a collaborative partnership with their agency and cities as an alternative to the reopener. Other cities have written the Regional Board in opposition of their proposal.

Public Works and County Counsel will represent the County and the Flood Control District at the September 14, 2006, hearing of the Regional Board. We have notified the Regional Board that at the hearing the County intends to exercise its right to an adjudicatory hearing including opening and closing statements, presentation of evidence, and examination and cross-examination of witnesses. The County's evidence will include testimony from key employees who have firsthand knowledge of our efforts to comply thus far with the TMDL's bacteria limits, success stories, and challenges alike. Our strategy is to demonstrate to the Regional Board members the vast extent and cost of the County's compliance efforts. We also intend to call as witnesses certain Regional Board staff members and to demonstrate, through their testimony, why the reopener is unnecessary or premature at this time.

We will notify your Board of the outcome of our efforts. If you have any questions regarding this matter, please contact me or your staff may contact Mark Pestrella, Assistant Deputy Director, Watershed Management Division, at (626) 458-4300.

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Attach.

cc: Chief Administrative Office  
Executive Office

**SUMMARY OF TECHNICAL AND LEGAL COMMENTS  
PROPOSED REOPENER OF THE NATIONAL POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PERMIT**

**The County's commitment to meeting bacteria standards at Santa Monica Bay Beaches**

Since adoption of the Total Maximum Daily Load (TMDL), the County has voluntarily taken actions to meet bacteria standards at the beaches, including designing and constructing 15 low-flow diversions in Santa Monica Bay. The total design and construction cost of each diversion structure is approximately \$1 million. Among other things, the Flood Control District has also:

- Constructed an infiltration pit at Redondo Beach to capture urban runoff before it reaches the beach.
- Completed 90 percent of design plans for a \$750,000 ultraviolet treatment device in Marie Canyon to reduce bacteria, trash, and sediment levels in urban runoff before it reaches the beach.
- Begun the process to hire a consultant to identify sources of bacterial contamination in urban runoff in Ramirez Canyon.
- Assisted the Cities of Santa Monica and Los Angeles in the planning and design of their diversion structures.

**Reopening the permit to include numeric limits is directly contrary to the Environmental Protection Agency Guidance**

The proposed reopener of the National Pollutant Discharge Elimination System (NPDES) Permit to include the TMDL's numeric bacteria limits is contrary to an Environmental Protection Agency guidance memorandum issued in 2002, in which the Environmental Protection Agency directly rejected placing numeric limits based on TMDLs in stormwater permits, recognizing that numeric limits are neither feasible nor appropriate given the variability of stormwater runoff and the current lack of knowledge as to sources of pollutants and effective treatment for those pollutants. Instead of numeric limits, the Environmental Protection Agency wrote that limits should be expressed as Best Management Practices or other similar requirements through an iterative, adaptive approach.

**Reopening the permit at this time is premature for a number of reasons**

- On June 21, 2006, the State Water Resources Control Board released the findings of its Storm Water Panel on the feasibility of applying numeric limits to stormwater discharge permits, such as the NPDES Permit. The Panel writes, "It

is not feasible at this time to set enforceable effluent criteria for municipal BMPs and in particular urban discharges.” The Regional Board’s proposal is directly contrary to the just-issued findings of the Panel, which includes nationally-recognized experts in the field of stormwater and urban runoff.

- The Regional Board should not incorporate numeric bacteria limits into the NPDES Permit when the full spectrum of bacteria sources is not known and while the issue of whether fecal bacteria from nonpoint sources accurately indicates the presence of human pathogens is being examined.
- There is no reason why incorporation of the TMDL’s limits should be addressed now as opposed to during the normal permit renewal process, which is expected to begin within a few months as the current NPDES Permit expires in December 2006. Furthermore, the Regional Board, the County, the Flood Control District, and the other permittees should develop a coordinated approach for incorporating into the next NPDES Permit the Santa Monica Bay Beaches Bacteria TMDL and all the other TMDLs that have been adopted to date. It should not be done on a piecemeal basis as is being proposed with this reopener, which addresses only one of several TMDLs currently in effect.
- The reopener of the NPDES Permit should not take place at this time because the Santa Monica Bay Beaches Bacteria TMDL needs to be amended such that its compliance deadlines are coordinated with those of the bacteria TMDLs for Malibu Creek and Ballona Creek.
- There is no need to reopen the NPDES Permit because it already has sufficient provisions to enforce water quality standards. The voluntary efforts taken by the County and other cities demonstrate that they have been implementing projects to comply with the TMDL’s limits without the NPDES Permit having been modified. To the County’s knowledge, Regional Board staff has not expressed dissatisfaction with these efforts. Nevertheless, the permit already has provisions that can be invoked by the Regional Board to require action by the permittees.

**The proposed findings are not sufficient to support the proposed reopener**

The Regional Board has not made findings to support the need for the reopener of the NPDES Permit. Among others, the Regional Board has not made:

1. A finding identifying the source of the bacteria that is causing any exceedance.
2. A finding that it is technically feasible to comply with the terms of the proposal.
3. A finding that the terms of the proposal can be met through cost-effective programs that will be accepted by the public.

4. A finding that the proposal will not require the permittees to adopt controls or implement programs that go beyond the maximum extent practicable standard.

**The evidence identified to date is insufficient to support the proposed findings that the Regional Board is required to make**

The evidence the Regional Board has identified to date is insufficient to support the findings the Regional Board is required to make before it can adopt the proposed Amendment. Indeed, to date, the Regional Board has identified no evidence that can support the Amendment. Absent identification of the evidence, the County and other permittees are precluded from commenting on whether the evidence would support the findings to be made and the changes proposed for adoption.

**The proposed language is unclear**

The proposed language is ambiguous as to the discharges and locations to which the Amendment is meant to apply. The following language is proposed to be added to the NPDES Permit:

**Discharge of summer dry weather and winter dry weather flows containing bacteria in excess of the waste load allocations specified in the Santa Monica Bay Beaches Dry-Weather TMDL is prohibited.**

This language is ambiguous in that it does not specify whether the prohibition applies to all discharges under the permit regardless of the receiving water body or only to discharges to Santa Monica Bay.

**The monitoring points identified in the proposal are inconsistent with the monitoring points developed pursuant to the TMDL.**

The monitoring points identified in the proposal are inconsistent with the monitoring points identified by the County and cities in a coordinated monitoring plan, which was prepared in consultation with, and subsequently approved by, Regional Board staff.

**Adjudicatory Hearings**

By the letter submitted on June 20, the County notified the Regional Board that it was not waiving its right to an adjudicatory hearing and that it intends to exercise its right to opening and closing statements, presentation of evidence, and examination and cross-examination of witnesses, unlike the regular public hearing the Regional Board was intending to hold, which would allow only three minutes for the County to give oral comments without any opportunity for the County to rebut statements made by Regional Board staff and other parties.

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