



*Ventura Countywide  
Stormwater Quality  
Management Program*

Participating Agencies

May 27, 2008

Camarillo

Ms. Tracy Egoscue  
Executive Officer

County of Ventura

Los Angeles Regional Water Quality Control Board  
320 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Fillmore

**SUBJECT: DRAFT TENTATIVE ORDER OF THE VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (NPDES No. CAS004002) FOR THE VENTURA COUNTY WATERSHED PROTECTION DISTRICT, COUNTY OF VENTURA AND THE INCORPORATED CITIES**

Moorpark

Ojai

Dear Ms. Egoscue:

Oxnard

The Ventura Countywide Stormwater Program ("Ventura Program") would like to take this opportunity to provide comments on the Regional Water Quality Control Board's ("Regional Water Board") draft tentative of Waste Discharge Requirements for Storm Water Discharges from the Municipal Separate Storm Sewer System ("MS4") within the Ventura County Watershed Protection District, County of Ventura, and the Incorporated Cities therein (collectively referred to as the "Permittees") ("Draft Tentative Order") (NPDES Permit No. CAS004002), which was released for public comment by the Regional Water Board on April 29, 2008.

Port Hueneme

San Buenaventura

Santa Paula

Simi Valley

Many of our comments submitted here are similar, and in some cases identical, to comments previously submitted on earlier versions of the Draft Tentative Order. We find it necessary to repeat, or incorporate by reference, many of our comments previously submitted because several essential elements of the Draft Tentative Order remain the same despite repeated attempts to convey our major concerns. **In particular, we continue to have major concerns with the inclusion of Municipal Action Levels ("MALs")** in the form as currently constituted in the Draft Tentative Order. Since the first draft was issued in 2006, we have submitted comprehensive comments on both March 6, 2007 and October 12, 2007. To the extent that such comments apply to the remaining issues of concern, we hereby incorporate by reference our earlier submittals.

Thousand Oaks

Ventura County  
Watershed Protection  
District



Furthermore, we continue to find ourselves at a disadvantage with regard to the Regional Water Board's thought process and consideration of previous comments because the Draft Tentative Order does not include the requisite fact sheet required by the Code of Federal Regulations, Title 40, section 124.56. We recognize that the Regional Water Board intends to release a final tentative order for public review and comment that will include the fact sheet prior to Regional Water Board consideration and adoption. However, in the meantime, the Permittees and other interested parties are unable to fully comment on the Draft Tentative Order until all required elements are provided for review and comment. Thus, while we have made significant effort to convey our comments and concerns on the Draft Tentative Order through these comments and all of the comments previously submitted, the Ventura Program reserves the right to provide new and different comments when the final tentative order, fact sheet and other related documents are released for public review and comment.

Our primary purpose with this letter is to highlight our more fundamental issues associated with the Draft Tentative Order. In addition, as we have done in the past, we have included a marked-up version of the Draft Tentative Order as an attachment. (See Attachment A.) The marked-up version provides our suggested permit language for provisions within the Draft Tentative Order which we feel will improve and/or provide better water quality protection.

Our fundamental issues with the Draft Tentative Order included here are as follows:

- I. Overly Prescriptive and Lacks Flexibility
- II. Inappropriate Calculation, Development and Application of Municipal Action Levels (MALs) for Ventura County Stormwater
- III. Misuse of MALs to Determine Compliance with Maximum Extent Practicable (MEP)
- IV. Unintended Consequences of Performance Criteria for Treatment Control BMPs
- V. Lack of Fully Integrated and Technically Sound Approach to Water Quality Protection for New Development
- VI. Misapplication of Monitoring to Support Program Implementation
- VII. Miscellaneous Permit Provisions (TMDLs, Trash Excluders)

Before proceeding directly with our comments, we must first convey to you our ultimate goal. We, the Permittees, collectively and individually wish to work cooperatively with the Regional Water Board and the Regional Water Board staff to obtain a reasonable MS4 permit that reflects the issues of concern for Ventura County and allows Ventura County and the incorporated cities therein to prioritize and direct resources appropriately within jurisdictional boundaries. Unfortunately, the Draft Tentative Order is replete with prescriptive requirements that remove local flexibility in the implementation and regulation of an effective stormwater program. More importantly, the financial impact to our communities based on implementation of the Draft Tentative Order as proposed may be devastating and may make compliance with all provisions of the Draft Tentative Order impossible. We estimate the annual cost to comply with this Draft Tentative Order to be approximately \$600 per household, which is a seventeen-fold increase from the current average cost of \$35/household. The Draft Tentative Order summarily dismisses local financial concerns by finding that local agency Permittees have the authority to levy service charges, fees, or assessments to pay for activities necessary to ensure compliance. (Draft Tentative Order at p. 12.) This finding fails to balance the realities associated with municipal

financing, limitations on local taxes due to Proposition 218, and the ability of local residents to pay increased fees for stormwater, especially in the current economic climate. In its adoption of an MS4 permit, the Regional Water Board should carefully balance the need to protect water quality, the activities associated with water quality protection and the financial cost of permit requirements. In many cases, the proposed permit requirements may not result in significant water quality improvement as compared to the cost of implementation.

Our specific comments on the fundamental issues included here are provided below and in the attachments.

### **I. Overly Prescriptive and Lacks Flexibility**

As currently configured, the Draft Tentative Order is overly prescriptive. Instead of requiring the Permittees to maintain and implement the various program elements associated with a successful stormwater program in a manner that allows for individual determinations with regard to specifics, the Draft Tentative Order specifically identifies the actions, activities and best management practices (“BMPs”) that the Permittees must implement. In fact, the Draft Tentative Order is so prescriptive that to substitute a different BMP for any that have been specifically identified in the Draft Tentative Order, the Permittees must petition the Regional Water Board’s Executive Officer to obtain approval. (Draft Tentative Order at p. 38.) This provision requires substantial fiscal and technical justification for a different BMP but provides limited guidance to direct the justification. Thus, the structure and nature of the Draft Tentative Order places new burdens on the Permittees as well as Regional Water Board staff. Furthermore, some of the requirements are illogical and beyond the legal authority of the municipalities.

For example, the Public Information and Participation Program (“PIPP”) requires the Permittees to develop and implement an outreach program for school age students. The education program may take the form of working within each school district and gaining access to the class rooms, paying funds to a Statewide Environmental Education Account, or conducting an outreach program directed at school age students. (Draft Tentative Order at pp. 40-41.) However, and regardless of the option chosen, the Draft Tentative Order requires the Permittees to develop and implement a strategy to measure the effectiveness of in-school educational programs. (Draft Tentative Order at p. 41.) Such a requirement is beyond the ability of the municipalities. It is not the role of municipalities to assess the efficacy of education curriculum at a local or statewide level. At most, the Permittees can ask for cooperation from the various in-county school districts to develop feasible education goals that include some measure of effectiveness, because the School Districts are under no obligation to work with the Permittees.

Another prime example of an inflexible permit provision is the one associated with the Annual Report. (Draft Tentative Order at Attachment H.) This provision provides a line-by-line listing of questions that must be replied to by the MS4s with no opportunity for the Ventura Program to offer an alternative reporting format. The Ventura Program has over the years developed a comprehensive and relevant annual reporting format. This format will need to be completely revised for no apparent benefit as the new format will not help to answer the fundamental question of whether our stormwater program is effective in reducing pollutants to the MEP.

Instead, the Annual Report will become an extensive bean counting exercise focused solely on tallying-up the number of BMPs that have been implemented without considering the effectiveness of implementation. In this specific instance, we strongly recommend that the Draft Tentative Order be modified to allow the Permittees to develop an Annual Report format that is subject to Regional Water Board Executive Officer approval. Furthermore, we suggest that the permit allow the use of an Annual Report format that reflects the Program Effectiveness Assessment Guidance Manual developed by the California Association of Stormwater Quality Agencies (CASQA). Other Regional Water Boards have begun to use this document as a basis for assessing the effectiveness of stormwater programs.

In another example, the Permittees must provide an electronic tracking system for grading permits. (Draft Tentative Order at p. 68.) While we believe a tracking system is important and should be maintained, we take exception to the Draft Tentative Order dictating the platform for tracking. Similar to a wastewater treatment plant, a NPDES permit should dictate the performance standard, not the method of treatment to meet the performance.

In summary, the overall structure and nature of the Draft Tentative Order should be revised to direct Permittees to achieve specified goals related to the various program elements versus requiring Permittee implementation of the individual actions, activities and BMPs identified in the Draft Tentative Order. Otherwise the Draft Tentative Order remains overly prescriptive, lacks flexibility and fails to allow for adaptive management to ensure that BMPs are effective in improving water quality.

## **II. Inappropriate Calculation, Development and Application of Municipal Action Levels (MALs) for Ventura County Stormwater**

The Ventura Program continues to have considerable and serious concerns regarding the calculation, development and application of MALs. Overall, we contend that the MALs as calculated are not technically sound, and more importantly, are not legal in the manner as proposed in the Draft Tentative Order. Furthermore, exceedances of the MALs after Year 3 may subject the Permittees to mandatory minimum penalties because the current configuration of MALs in the Draft Tentative Order may be considered effluent limitations under state law. (See Wat. Code, § 13385.1 where effluent limitation means “a numerically expressed narrative restriction.”) Our comments here highlight and summarize the relevant points to MALs that have been provided in previous submittals. For a more comprehensive discussion on both the technical and legal issues associated with the MALs as proposed in the Draft Tentative Order, we direct you in particular to Attachment A (Legal and Policy Comments) of the Ventura Program comments submitted on October 12, 2007 in response to the Second Draft Order dated August 28, 2007.

### **A. Draft Tentative Order use of MALs is Inconsistent with the Blue Ribbon Panel**

Consistent with our previous comments on the earlier Draft Orders, we submit that the specific MALs contained in the Draft Tentative Order are not technically supportable or valid. The technical validity of establishing numeric limits for outfalls was posed to a State Water

Resources Control Board (“State Water Board”) convened group of experts referred to as the Blue Ribbon Panel (“BRP”). The results and conclusions of the BRP are highlighted in a June 2006 Blue Ribbon Panel Report (“BRP Report”)<sup>1</sup>. The BRP Report **unequivocally** states the position **that numeric limits for municipal stormwater discharges are not possible at this time**. However, the BRP did agree that “action levels” may be used to identify “bad actor” catchments. Specifically, the BRP Report states:

*It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges ....*

*For catchments not treated by a structural or treatment BMP, setting a numeric effluent limit is basically not possible. However, the approach of setting an ‘upset’ value, which is clearly above the normal observed variability, may be an interim approach which would allow “bad actor” catchments to receive additional attention. For the purposes of this document, we are calling this “upset” value an **Action Level** because the water quality discharge from such locations are enough of a concern that most all could agree that some action should be taken ... . (BRP Report at p. 8, emphasis added.)*

The Draft Tentative Order attempts to portray MALs as levels consistent with the BRP Report. (Draft Tentative Order at pp. 23-24.) However, comprehensive reading of the Draft Tentative Order provides evidence to the contrary. In fact, after Year 3, MALs in the Draft Tentative Order become enforceable numeric limits, not action levels as envisioned by the BRP. Furthermore, the proposed MALs were not developed in a manner that is consistent with the concept of MALs as put forward by the BRP. To develop an appropriate action level, the BRP suggested various options, which included: (1) consensus based approach; (2) ranked percentile distribution; and, (3) statistically based population parameters.

The Draft Tentative Order claims to use a statistical approach that uses the central tendency of the dataset and accounts for data variability. (Draft Tentative Order at p. 23.) In its actual calculation, the Draft Tentative Order took the median value of a national dataset and multiplied it by the coefficient of variation times two. There is no basis for this approach in establishing action levels. In fact, this calculation reflects the variability of the data (measured as the standard deviation) and does not account for the central tendency of the dataset.<sup>2</sup> This statistical approach is not consistent with the BRP suggestion for a statistically relevant calculation.

In addition, the Draft Tentative Order uses a national database to generate the MALs. (Draft Tentative Order at p. 23.) It is not appropriate to use a national database in this case because it penalizes the dry or semiarid (low rainfall) regions of the country. (See discussion below.) Moreover, the BRP noted that there is greater opportunity to use various datasets for establishing the MALs. Three options proposed in the BRP Report, in order of preference, are:

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<sup>1</sup> The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities (June 19, 2006).

<sup>2</sup> See CASQA March 7, 2007 letter regarding the Ventura Draft permit at page 4.

- Local urban stormwater monitoring data (the BRP even notes the existence of such datasets from Los Angeles County, Orange County and other California MS4 programs)
- Combine municipal permit monitoring datasets if there is a lack of data for specific constituents in any one location
- National database

The Draft Tentative Order selects the least preferred option to generate the MALs even though there are significant local stormwater datasets available. In fact, California MS4s have more comprehensive datasets than other MS4s throughout the country. Thus, there is ample opportunity to use local, regional and statewide datasets to establish action levels and it is not necessary to rely on a national dataset.

The MALs in the Draft Tentative Order are inconsistent with the intent and purpose of MALs as originally introduced by the BRP, and are calculated in a manner that is inconsistent with the BRP’s suggested approach.

**B. MALs in Draft Tentative Order may Establish New Water Quality Objectives for a Waterbody**

Instead of identifying “bad actors,” the MALs as calculated in the Draft Tentative Order may actually establish new water quality objectives for a waterbody. Or, at the very least, they may establish action levels that are below applicable water quality objectives for the waterbodies in question. For example, the Draft Tentative Order proposes a MAL for total nickel of 19.2 ug/L that must be compiled with 80% of the time based on a running average. (Draft Tentative Order at p. 32; Attachment C at p. 1.) Currently, the waterbodies in Ventura County and representative outfalls cannot comply with this MAL because they exceed the nickel MAL more then 20% of the time, as summarized below in Table 1.

Table 1. Comparison of Ventura County Waterbodies with Nickel MAL

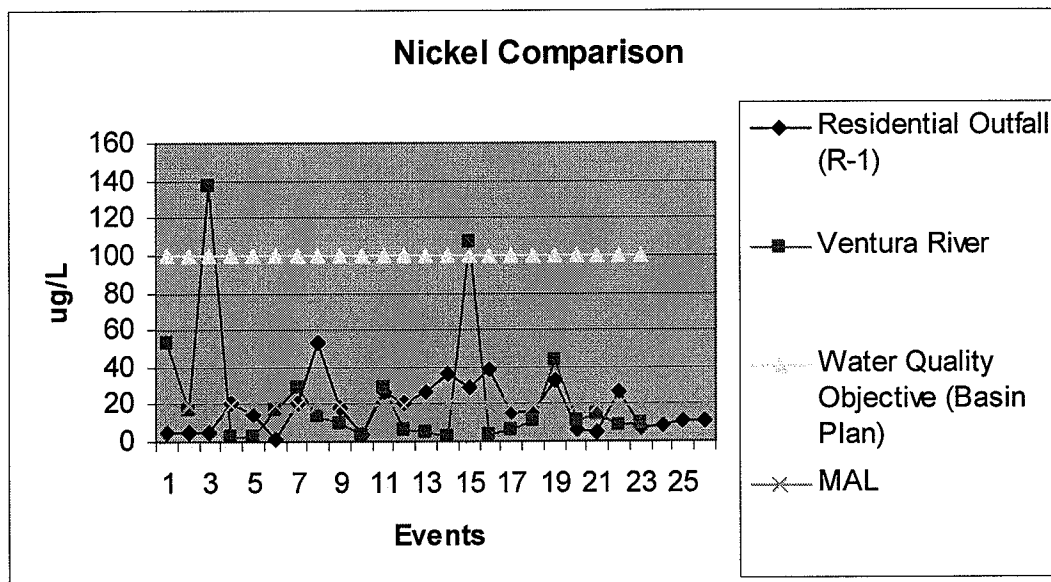
<b>Waterbody/discharge</b>	<b>Percentage of time<sup>1</sup> &gt; MAL</b>
Calleguas Creek	<b>59</b>
Santa Clara River	<b>70</b>
Ventura River	<b>26</b>
Residential outfall	<b>41</b>
Industrial outfall	<b>58</b>

On the other hand, the Water Quality Control Plan for the Los Angeles Region (“Basin Plan”) contains a surface water quality objective for nickel in Ventura County that is set at 100 ug/L<sup>3</sup>. By comparison, the MAL is five times more restrictive than the adopted water quality objective, which has been adopted to protect beneficial uses. The net result is that all waterbodies in

<sup>3</sup> Alternatively, the CTR establishes acute and chronic water quality objectives based on hardness. Using a hardness of 100 mg/L as CaCO<sub>3</sub> the dissolved nickel objective ranges from 52 to 469 µg/L.

Ventura County are out of compliance with the nickel MAL (see above Table 1), but not necessarily with the applicable water quality objective. In sum, the waterbodies exceed the MALs even though they comply with the applicable water quality objective that supports beneficial uses. Consequently, the Permittees will be found to be out of compliance with the MEP standard even though they are not causing or contributing to an exceedance of an applicable water quality standard. A plot of monitoring data for the Ventura River (of which the watershed is only 3% developed) and a residential outfall as compared to the MAL, and the water quality objective is shown in Table 2 below.

Table 2.



A closer review of Table 2 shows the Ventura River is substantially in compliance with the water quality objective in the Basin Plan but not the MAL. Furthermore, because the waterbody is primarily in compliance with the applicable water quality objective, discharges from residential storm drain outfalls are clearly not causing or contributing to an exceedance of a water quality standard. Thus, the MS4 discharges and the waterbody do not exceed or impact the Basin Plan water quality standards, but due to the application of the MAL, the Permittees would be out of compliance with the Draft Tentative Order and would potentially be subject to mandatory minimum penalties for failing to comply with an effluent limitation.

**C. Compliance with MALs will Prove to be Problematic**

It is also worth noting that at the September 20, 2007 workshop, Regional Water Board staff and Heal-the-Bay presented BMP performance data for treatment control BMPs and not for source control BMPs implemented through a stormwater management program. Thus, presumably compliance is only achievable through the implementation of treatment control BMPs. As a result, **the Draft Tentative Order is structured to effectively require Permittees to retrofit all outfalls with treatment control BMPs.** However, the language in the Draft Tentative Order creates an illusion that the Permittees can comply with the MALs through a traditional stormwater management program. (Draft Tentative Order at p. 32.) If it is the Regional Water

Board's intent to structure compliance around the implementation of treatment control BMPs (and abandon source control), then the Draft Tentative Order must clearly state that all outfalls are to be retrofitted with treatment control BMPs. Obviously, the costs and ramifications on Permittees for such a requirement are huge and in some cases may not be possible without displacing existing development. Preliminary cost estimates for retrofitting all outfalls with treatment control BMPs are presented later in this comment letter.

The Draft Tentative Order states that the American Society of Civil Engineers—Best Management Practices' (ASCE BMP) database was used to demonstrate the practicality and ability of the municipalities to achieve the MALs. (Draft Tentative Order at p. 24.) Regional Water Board staff articulated this same point at the September 20, 2007 workshop. However, in reviewing options for lowering the nickel concentrations to the MAL level, the Permittees were unable to verify that the BMPs purported to be practicable in the database could in fact reduce nickel to levels required for compliance. This is further supported in Attachment C of the Draft Tentative Order, which does not include a performance standard for nickel. In other words, the ASCE BMP database has no supporting documentation demonstrating the effectiveness of treatment control BMPs to reduce nickel.

**D. MALs Penalize West Coast Stormwater Programs**

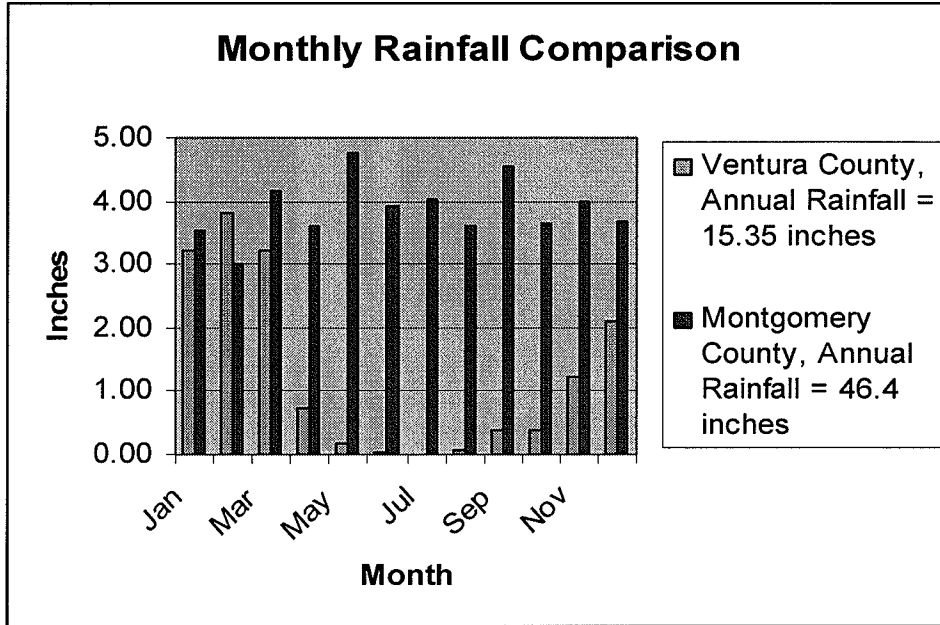
As noted previously, the MALs as currently configured will penalize municipal programs in dry or semiarid climates. By way of example, we examined two comprehensive stormwater management programs, one on the east coast and one on the west coast to consider the impact of arid conditions. The east coast program was for Montgomery County, Maryland, and the west coast program was for Ventura County. The general demographics of the two programs are summarized in Table 3 below.

Table 3. Comparison of Ventura County and Montgomery County Characteristics

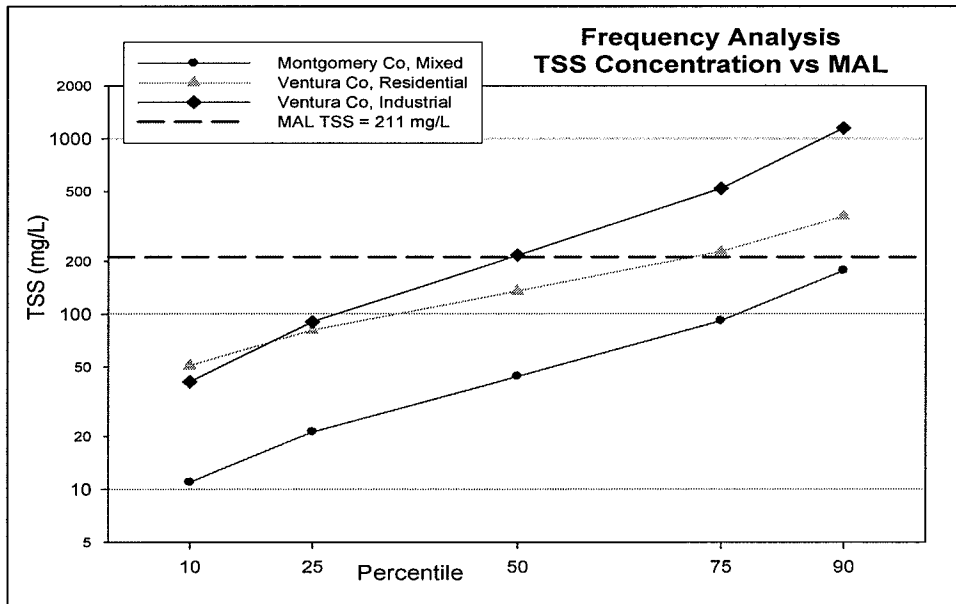
<b>Montgomery County, MD</b>	<b>Ventura County, CA</b>
County population in 2005: 927,583	County population in 2006: 817,346
Population distribution: 97% urban, 3% rural	Population distribution: 97% urban, 3% rural
Population density: 1872 people per square mile	Population density: 431 people per square mile
Land area: 496 sq. mi.	Land area: 1845 sq. mi.
Water area: 11.6 sq. mi.	Water area: 362.9 sq. mi.
Forested area: 19%	Forested Area: 46%

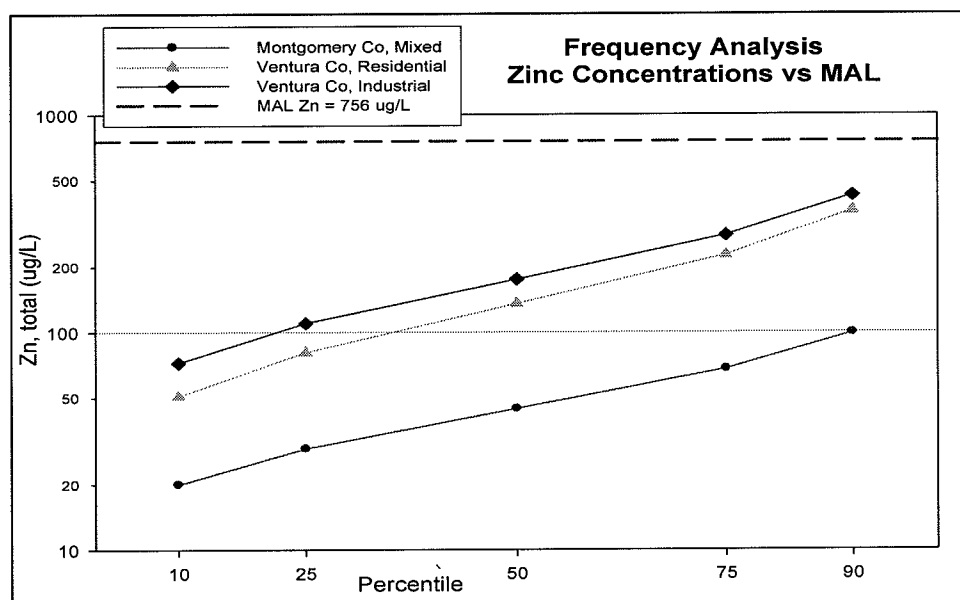
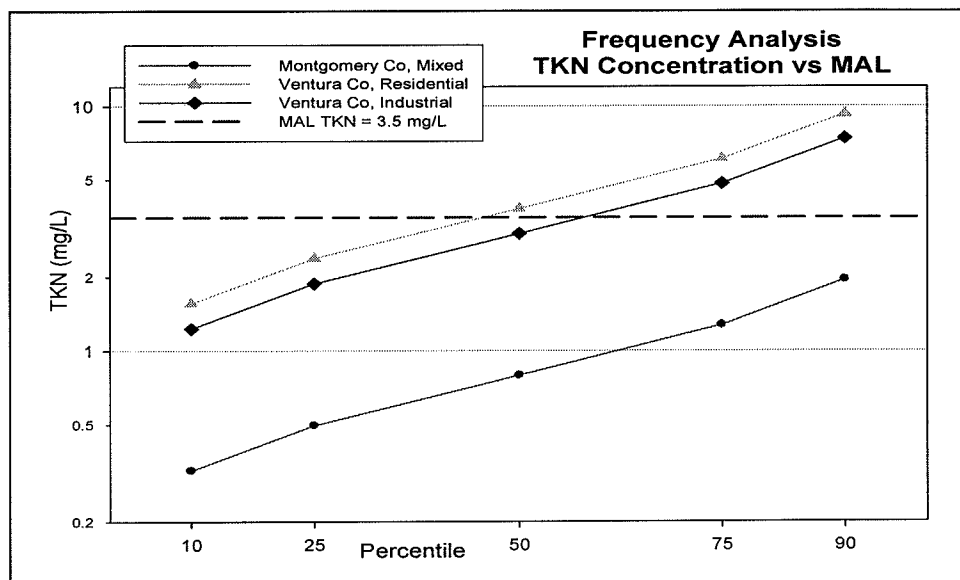


The two counties have similar stormwater management programs (see Attachment B), and as shown by Table 3 above similar demographics. The significant difference between the two programs is the annual rainfall amount and precipitation pattern. This is shown in the graph that follows.



Both programs have long-term monitoring programs including characterization of discharges. A side-by-side comparison of the monitoring results of selected constituents common to both programs is shown in the following frequency distribution graphs. The proposed MALs are also included in the graphs.





A review of the graphs clearly shows that the runoff from the Montgomery area is of better quality than the runoff from Ventura County. The reason for this difference is not due to a difference in stormwater management program implementation but rather to the difference in annual precipitation. Both programs have similar implementation efforts and the outfalls examined in each program are similar in characteristics. The year-round distribution of rainfall on the east coast mitigates the build-up and wash-off of pollutants. This may be shown another way by calculating the differences in the runoff means and comparing that difference with the inverse difference in rainfall; in other words, the pollutant concentration is inversely related to the amount of rainfall.

This is shown in Table 4 below.

Table 4.

Constituent	Units	Runoff means		Ratio (Mont/Ven)
		Montgomery	Ventura (R-1)	
TSS	mg/L	44	135	.33
KN	mg/L	0.8	3.8	.21
Total P	mg/L	0.13	0.40	.33
Cadmium	ug/L	0.22	.81	.27
Copper	ug/L	28.5	23.2	1.23
Lead	ug/L	7.5	15.1	.50
Zinc	ug/L	44	135	.33
Annual Rainfall	inches	46.4	15.35	.33 (Ven/Mont)

Another way to consider the impact of rainfall is to calculate the annual loading for the noted constituents using the local runoff data and climatic data. Assuming similar runoff coefficients (RO = 0.60) the annual loading for a typical development in each county is summarized in Table 5 below.

Table 5.

Constituent	Montgomery Annual Load (#/acre)	Ventura Annual Load (#/acre)
TSS	0.28	0.28
KN	0.01	0.01
Total P	0.0008	0.0008
Cadmium	0.0017	0.0014
Copper	0.05	0.18
Lead	0.03	0.05
Zinc	0.28	0.28

Again a review of Table 5 demonstrates that on an annual basis the two programs have very similar annual runoff loads.

Such a conclusion is consistent with the results of the national dataset (used by the Regional Water Board staff to establish the MALs). The following finding is taken from the most recent Progress Report regarding the National Stormwater Quality Database:

*5. Residential area data were also analyzed across the different EPA rain zones for the country. The wettest areas of the country (Southeast and Northwest) may have the lowest EMCs for some stormwater pollutants. This may be due to the reduced inter-event times for pollutant buildup and greater runoff for dilution. (Page 6.)<sup>4</sup>*

<sup>4</sup> [http://www.cwp.org/NPDES\\_research\\_report.pdf](http://www.cwp.org/NPDES_research_report.pdf)

The point to be made here is that the use of any dataset to establish Technology Based Effluent Limits (i.e., to establish MEP) must be done in the context of U.S. EPA guidance for developing such limits. A full range of issues must be considered and not the least being local climatic data. (See Attachment A (Legal and Policy Comments) of the Ventura Program comments submitted on October 12, 2007, in response to the Second Draft Order dated August 28, 2007, for a full discussion on the need to consider required factors when developing technology based limits.) As presented in the previous paragraphs, the Ventura Program would be out of compliance with the MALs while Montgomery County would be in compliance even though the Ventura Program is as comprehensive of a stormwater management program as the one in Montgomery County. This is because compliance is directly related to the amount of rainfall versus the different levels of BMP implementation between the two stormwater programs. This is fundamentally inconsistent with the definition of MEP and inherently unfair to dry and semi-arid climate stormwater programs.

**E. Cost for Compliance with MALs is Not Commensurate with the Environmental Benefits to Be Gained**

In addition to our concerns regarding the substantive, prescriptive provisions contained within the Draft Tentative Order, we are also concerned that the Draft Tentative Order establishes a countywide program that has little connection with the pollutants of concern ("POC") as identified by the Permittees. Over the course of the last five years, the Ventura Program has spent considerable resources on identifying the pollutants that warrant special attention. In some cases the POC focus complements what the Draft Tentative Order specifies and in other cases there is no relationship (e.g., installation of treatment control BMPs for nickel, chromium, mercury, and COD which are not listed as a POC).

To better understand the Permittees' liability in meeting the Draft Tentative Order, we compiled our monitoring data for both the land discharge sites and mass emission sites. These data were compared to the MALs from Attachment C of the Draft Tentative Order. Our review showed that the Permittees would be in substantial non-compliance with the MALs for constituents not typically found in urban runoff. Using our entire data set for the residential monitoring site, our assessment shows that our discharges will exceed the 20% running average for nickel, COD, TKN, and nitrate. If we use only the data from a specific year to calculate the running average then list of non-compliance expands to include chromium and TSS. As a result, we would be required to construct treatment control BMPs to meet the MALs.

To further assess the Permittees' exposure, we have estimated the costs for complying with the Draft Tentative Order. Our costs reflect a program required to meet the new baseline program element provisions, an enhanced program which includes the baseline program plus the installation and maintenance of trash excluders, and a compliance program which consists of baseline, enhanced, and the cost for constructing BMPs to comply with MALs<sup>5</sup>.

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<sup>5</sup> It should be noted that although we have developed cost estimates for implementing treatment control BMPs to meet MALs, it is uncertain whether such an approach is valid (see our discussion regarding BMP performance). To support this comment one should consider the nickel MAL. We are uncertain which BMP can meet the nickel MALs as there are no BMP performance data for nickel removal.

The costs estimated below are for compliance with the Draft Tentative Order only and do not include costs of compliance associated with implementation of adopted Total Maximum Daily Loads (“TMDL”). We initially developed the cost for the City of Camarillo and expanded it to the Ventura Program. This comparison is shown in the following Table.

Table 6. Summary of Ventura Program Costs Impacts

Program	Annual Cost \$/Household			
	Current Effort	Draft Order Baseline <sup>3</sup>	Enhanced <sup>4</sup>	Compliance <sup>5</sup>
Statewide Study <sup>1</sup>				
Range	18-46	--	--	--
Mean	29	--	--	--
Ventura County				
Range	18-44 <sup>2</sup>	--	--	--
Mean	35	60	68	598

<sup>1</sup>NPDES Stormwater Cost Survey, Prepared by Office of Water Programs for State Water Board, Jan '05. Reflects Annual Budgets for 02/03.

<sup>2</sup> Based on 03/04 budget submitted in Ventura Countywide 2004/05 Annual Report.

<sup>3</sup> Reflects an increase in Permittee staff to meet Draft Tentative Order baseline requirements.

<sup>4</sup> Reflects baseline requirements (see note 3) and installation and maintenance of trash excluders in high trash generating areas.

<sup>5</sup> Reflects countywide program estimated costs for baseline, enhanced and retrofit (infiltration, bioretention) of outfalls and drainage areas to meet MALs. Treatment BMP costs were based on City of Fillmore 10/07/07 comment letter.

A review of Table 6 demonstrates that the typical household costs will increase approximately seventeen-fold for full compliance, excluding costs for TMDL implementation. In addition, new requirements under the Planning and Land Development program will result in increases in housing costs. Although these costs are not directly related to the general public per se, these additional costs impact local affordability and the economic viability of the communities.

### III. Misuse of MALs to Determine Compliance with MEP

The Draft Tentative Order contains slightly revised provisions related to MALs as compared to the Second Draft Order. (Draft Tentative Order at p. 32.) However, overall the use and implication of MALs remains the same. The Draft Tentative Order continues to use MALs as a numeric metric to interpret the technology based MEP. Furthermore, the MALs are applied “end-of-pipe” and are functionally numeric effluent limits, which may subject the Permittees to mandatory minimum penalties. In turn, the Permittees continue to oppose the use of MALs in this fashion for many reasons, both legal and technical. As indicated above, we have previously submitted extensive comments on the legal and policy implications associated with the use of

MALs in the manner proposed by the Draft Tentative Order. We encourage Regional Water Board staff to review our previous comments and objections because they continue to apply. However, for the sake of efficiency, we have not repeated those comments here. In summary, we believe that the MALs as proposed in the Draft Tentative Order are major obstacles to compliance and the fiscal viability of implementing the provisions contained in the Draft Tentative Order.

In the alternative, the Permittees recommend that MALs be re-fashioned from a nationally based numeric value that determines permit compliance to a locally relevant upset value that triggers the need for further evaluation and, if appropriate, modification of management practices. Our alternative proposal for the use of MALs is summarized here. We have also provided specific recommended language for this approach in Attachment A.

**A. Permittees' Alternative Approach for Use of MALs**

The Permittees continue to disagree with the use of MALs to define MEP as a numeric value to determine compliance. However, we are supportive of an alternative method that is consistent with the approach proposed by the BRP in its Report. We believe that our alternative meets the Regional Water Board's desire, as we understand it, to elevate the municipal stormwater program in Ventura County.

The alternative approach would establish "an 'upset' value, which is clearly above the normal observed variability ... which would allow bad actor catchments to receive additional attention." (BRP Report at p. 8, emphasis added.) The BRP Report termed upset value as "... an Action Level because the water quality discharge from such locations are enough of a concern that most all could agree that some action should be taken ...." (*Id.*) The strikeout/underline language in Attachment A presents the Permittees' proposal for how MALs should be developed and used to achieve the purpose set forth in the BRP Report. In summary, the Permittees' proposal is to use locally relevant MALs as a tool which, together with additional investigation and attention, will ensure that the MEP standard is achieved in each sub-watershed.

To develop MALs for this purpose, the Permittees propose to use the 80<sup>th</sup> percentile of local, countywide data to develop MALs. Any sub-watershed that exceeds the 80<sup>th</sup> percentile would be above the normal observed variability and in need of additional attention. Also, the Permittees propose to develop MALs only for those pollutants where there is water quality impairment (based on the section 303(d) list), or have been identified as POCs by the Permittees and that are present in significant quantities in MS4 discharges. Such an approach avoids using public resources unwisely and inefficiently by giving attention to pollutants that are achieving norms and not resulting in water quality concerns.

Where a sub-watershed exceeds an MAL due to the MS4 discharge, the Permittees propose that the responsible Permittee be required to submit an "MAL Action Plan" to the Regional Water Board's Executive Officer. The plan would need to include an assessment of the sources responsible for the abnormal pollutant levels, the existing BMPs that address those sources, an assessment of additional BMPs and actions that could be implemented, and, based on such analyses, the additional BMPs and/or actions the responsible Permittee proposes to implement to

achieve the MEP standard. The Executive Officer, in approving the plan, would have the opportunity to identify additional BMPs or actions that the Regional Water Board believes necessary to address the constituent of concern.

In other words, the Permittees propose that MALs be used to identify poor performing catchments or sub-watersheds for pollutants of concern to implement further practical controls. Where MALs are exceeded, the Permittees, in conjunction and with approval by the Regional Water Board's Executive Officer, would be required to implement additional actions deemed necessary to address the high concentration. MALs would not be used to interpret MEP numerically and would not function as effluent limitations. Overall, we propose that MALs be used to elevate municipal responsibility in a manner that is reasonable and practical while improving water quality – not in a manner that is designed for failure.

#### **IV. Unintended Consequences of Performance Criteria for Treatment Control BMPs**

The Draft Tentative Order includes a major new permit requirement that was not in previous draft versions of the permit. For the first time, the Draft Tentative Order proposes to require performance standards for treatment control BMPs. Although the Permittees support the idea of establishing performance standards for these BMPs, we believe the approach taken in the Draft Tentative Order is seriously flawed. As part of our assessment of this new requirement, we retained the services of Dr. Michael Barrett of the University of Texas at Austin. Dr. Barrett is a well-known expert in the area of stormwater BMPs and currently serves on the project oversight committee for the ASCE/BMP database used by the Regional Board staff. His review and recommendations are provided in Attachment C.

In summary, his review finds that in general, the adoption of performance standards for stormwater treatment systems is an improvement over requirements that specify little more than the water quality volume. However, there are several issues related to the proposed numerical performance standards in the Draft Tentative Order, which include:

1. The analysis used by Regional Water Board staff to establish numerical standards based on performance by pollutant results in a situation where a BMP that does not meet every single criterion is eliminated from consideration. In fact, the performance standards established in Attachment C of the Draft Tentative Order will exclude the use of media filters, extended detention basins, biofilters, and hydrodynamic separators in Ventura County.
2. The BMP categories used in the analysis grouped together many devices that are not that similar. For example, the BMP category for biofilters includes both swales and vegetated buffers. Performance of the two BMPs is substantially different. Furthermore, there is a more robust dataset for the buffer strips, which exhibit better performance than swales.
3. The use of effluent concentrations ignores the benefit of ancillary infiltration that occurs in a variety of low impact development techniques. This is especially true when one considers the infiltration capability of a BMP.

4. The use of effluent discharge concentrations overcomes some of the problems associated with characterizing pollutant reduction as a percent removal; however, there are a number of other significant problems with this approach.
5. There will be difficulty in administering an effluent standard for BMP performance. Given the uncertainty about the precise BMP design criteria (e.g., drawdown time) that are needed to support the BMP performance, the Permittees will need to rely on common design guidelines (e.g., California BMP Handbooks) and expect some uncertainty in the performance.

To properly and appropriately use BMP performance standards in the Draft Tentative Order, we recommend the following:

1. Redefine the standards as goals to acknowledge the uncertainty of the technology and the variability of the design criteria in the BMP database. In lieu of a performance goal, establish design criteria (even if by reference) to provide assurance to the Permittees and development community that if they implement a BMP per the design criteria then they will be presumed to be in compliance.
2. Establish a BMP performance standard based on BMP categories and not use the pollutant-by-pollutant category now in the Draft Tentative Order.
3. Create a standard that will allow more than one BMP to qualify.

Unless BMP performance standards are substantially revised in a manner as we have suggested immediately above, such standards should be removed from the Draft Tentative Order. Otherwise, as currently proposed, the BMP performance standards (much like the MALs) are akin to technology based limits that have not been adopted in accordance with applicable federal regulations.

**V. Lack of Fully Integrated and Technically Sound Approach to Water Quality Protection for New Development**

It is fair to say that the requirements for new development may have some of the most far reaching ramifications on development and redevelopment in California. While the Regional Water Board staff should be acknowledged for their initial efforts to define metrics for water quality protection, the Permittees have major concerns that when the requirements are taken as a whole they fall well short of the goal and may actually work against the goal. The Permittees make the following suggestions because the current approach (e.g., EIA, hydrograph matching, treatment BMP performance) does not adequately address the following issues:

- Sediment balance
- Magnitude of flow in the receiving waters
- Supportable exemptions
- Interdependence of hydrologic controls



Furthermore, the current approach will likely have unintended consequences for erosion downstream.

**A. Sediment Balance**

The Draft Tentative Order addresses the issue of hydromodification of natural stream channels by considering only flow rates and duration. The complimentary and necessary issue of sediment balance is ignored. Regulating the combination of flows and sediment to preserve downstream habitat and channels should be the goal of the final hydromodification criteria. A graphical representation of the relationship between sediment and flow in degrading (cutting) or aggrading (building) downstream channels is provided in Attachment D.

The Draft Tentative Order refers to “sediment” as a “primary pollutant impacting beneficial uses.” (Draft Tentative Order at p. 63.) This blanket referral attempts to generically characterize sediment as a pollutant that always impairs beneficial uses. Thus, the Draft Tentative Order attempts to remove any sediment from the construction and land development process. Such a characterization of sediment is inappropriate because it fails to recognize that there are many areas in our watersheds where there is high natural sediment yield, and the sediment yield is beneficial for a variety of uses. To avoid such a blanket characterization, the Draft Tentative Order should be revised to state “*sediment may at times contain pollutants or be a pollutant that impairs beneficial uses of watercourses.*”

**B. Magnitude of Flow in the Receiving Waters**

The flood studies in Ventura County by FEMA show that there are some large streams that will not be geomorphologically affected by slight changes in side drainage caused by new development projects. When the 100-year flow of the receiving water is very dominant compared to side drainages, the geomorphology of the receiving water is not significantly affected by side drainage. However, in some smaller Ventura County streams, like Arroyo Simi, even low but clear (effluent) flows have caused hydromodification effects of erosion downstream. While smaller streams like Arroyo Simi need hydromodification analysis, larger streams should be exempted. From a review of flow records in Ventura County, streams with larger than 100-year flow of 25,000 cfs are recommended to be exempt from hydromodification analysis. This threshold would exempt drainage to the County’s major waterways:

- Ventura River downstream of North Fork Matilija Creek
- Santa Clara River downstream of the County line
- Piru Creek, Sespe Creek, and Santa Paula Creek, downstream of the foothills
- Calleguas Creek downstream of Conejo Creek

**C. Supportable Exemptions**

The Draft Tentative Order requires all qualified projects to comply with hydromodification requirements, i.e. there are no exemptions for projects that have little to no effect on the streambed. To streamline and support the Permittees processing of project applicants, a list of exemptions to the hydrologic controls is suggested and shown below. This list may need to be

revised after the Stormwater Monitoring Coalition of Southern California (“SMC”) study is completed for final hydromodification criteria.

Exceptions to hydromodification requirements should include:

- A. All projects that disturb less than one acre;
- B. Projects that are replacement, maintenance or repair of a Permittee’s existing flood control facilities, storm drain, or transportation network;
- C. Redevelopment projects in the Urban Core that do not increase the effective impervious area or decrease the infiltration capacity of pervious areas compared to the pre-project conditions;
- D. Projects that have any increase in discharge that go directly to, or via a storm drain, a sump, lake, area under tidal influence, waterway that has a 100-year peak flow (Q100) of 25,000 cfs or more, or other receiving water that is not susceptible to hydromodification impacts; and
- E. Projects that discharge directly, or via a storm drain, into concrete or improved (not natural) channels (e.g., rip rap, sackcrete, etc.), which, in turn, discharge into a receiving water that is not susceptible to hydromodification impacts (as in D above).

**D. Interdependence of Hydrologic Controls**

The Draft Tentative Order should recognize the interdependence of hydrologic controls and the need to sequence analysis. We recommend that first municipalities be directed to utilize low impact development (“LID”) strategies, followed by water quality mitigation through treatment control BMPs and finally hydromodification controls for any remaining runoff. (See recommended flow chart in Attachment E.)

When LID and/or treatment BMP’s are used, a sediment balance study should be included to evaluate erosion potential - not the hydromodification criteria in the Draft Tentative Order. In the interim, and because of the complexity of this analysis, we recommend only developments greater than 50 acres be required to include the sediment balance analysis until the SMC studies are completed and design tools are developed. This is similar to the recent San Diego MS4 Permit.

Finally, we request the opportunity to update the Ventura County Technical Guidance Manual for Stormwater Quality Control Measures, and revising Provision 5.E.III.1 to include new sections on how to analyze combinations of hydrologic control measures and to address the sediment balance.

**E. Unintended Consequences**

We are concerned that the interim hydromodification criteria contained in the Draft Tentative Order will increase downstream erosion of habitat and stream channels because of it ignores the cumulative influence of LID and treatment BMP's on sediment transport. (Draft Tentative Order at p. 55.) The Draft Tentative Order only addresses water shear forces and does not consider the sediment balance issue. (See Attachment D for a detailed explanation.)

LID and treatment control BMPs in the Draft Tentative Order require post-project peak outflow from a project area be equal to or less than existing peak outflow, by allowing some storage, infiltration, consumption, or treatment. (Draft Tentative Order at p. 53.) This has the effect of settling sediments so that sediment outflow from a project that utilizes LID and/or treatment BMPs is less than the pre-project sediment outflow. This clearer "sediment hungry" discharge created by the LID or BMPs erodes downstream habitat, stream channels, and "starves" beaches of sand. Taking this to the extreme shows the potential extent of unintended consequences: to obtain the natural sediment load downstream of a LID site or treatment BMP, sediment needs to be collected at the project site, transported downstream, and then re-injected to the stream. To avoid such unintended consequences, we recommend that the interim criteria reflect only the implementation of LID strategies until such time that the SMC completes its Hydromodification Control Study.

**F. The Permit Creates A Disincentive for Redevelopment and Smart Growth Projects and the Redevelopment Project Area Master Plan (RPAMP) Alternative is not presently viable due to its lack of definition**

The Draft Tentative Order's requirements for redevelopment projects are equivalent to that of new Greenfield development:

- 5% EIA
- Treat runoff from a .75" rainfall
- Match the post-development hydrologic conditions with predevelopment conditions where "predevelopment" is defined as "native vegetation and soils that existed at the site prior to first development"
- Hydromodification controls such that the 2-year, 24 hour storm event post development peak flow matches pre-development peak flow, within 1%.

The Draft Tentative Order does not consider the unintended consequences on re-development. Only by considering redevelopment's benefit to the larger watershed and resource protection will water quality be improved. The Draft Tentative Order also misapplies the 5% EIA at a project level rather than a watershed or subwatershed level. Therefore, we propose that the Permittees be allowed to work with the Local Government Commission in the development of evaluation criteria for redevelopment and smart growth projects that recognizes and encourages the water quality and other environmental benefits of higher density infill and redevelopment projects. At this time, the concept of RPAMP is not fully developed and the proposed language in the Draft Tentative Order does not provide an adequate interim alternative. Until such time that all stakeholders can work cooperatively and collectively to further develop a viable RPAMP or

similar program, the Draft Tentative Order should instead allow a set of minimum LID BMPs that must be utilized on all redevelopment projects.

**G. Development Construction Program**

The Draft Tentative Order contains a prescriptive approach for addressing runoff from construction sites regardless of the nature of the construction site or activities on a site. The Draft Tentative Order would require all construction sites less than 1 acre in size to calculate the erosivity factor to determine if specific BMPs are required. Such a requirement would be overly prescriptive for many smaller construction site operators. In this case, the Draft Tentative Order should provide the Permittees with sufficient flexibility to require minimum BMPs as necessary and defer regulation of stormwater from the construction sites to the State Construction General Permit to address the erosivity issue.

The Permittees remain concerned with the overly restrictive nature of the grading prohibition as it currently stands. In particular, the Permittees are concerned with efforts necessary to administer a variance from the prohibition. To grant a variance from the prohibition, the Draft Tentative Order requires the Permittees to ensure total suspended solids are discharged at a concentration of 100 mg/L or less; turbidity of the discharge is 50 NTU or less; that the discharge will not impair beneficial uses; and, that there is a monitoring program to ensure effectiveness. These requirements for a variance would apply even to projects that are anticipated to have little or no discharge to the waterbody because the sites include properly designed, erosion and sediment control BMPs. Furthermore, in our estimation, the turbidity and total suspended solids limitations would require the installation of advanced treatment units.

Fundamentally, we have concerns that the requirements proposed for issuance of a variance are in fact technology based effluent limits for high-risk construction sites. (Draft Tentative Order at p. 63.) The Permittees do not support using the Ventura MS4 Stormwater permit to create such technology-based limits. We would submit that it would be more appropriate for technology based effluent limits to be developed through the State Construction General Permit process where all stakeholders are involved versus the Ventura permit, which is of interest to only a few. Please note that our comments relative to the development of technology based effluent limits noted previously in this letter and in our October 12, 2007 comments are relevant here as well.

In lieu of the approach proposed in the Draft Tentative Order, we support the alternative approach forwarded by the Building Industry Association ("BIA"). Under the BIA approach, the order should specify the additional BMPs that would be required for high-risk projects such as those conducted on slopes that exceed 20%.

**VI. Misapplication of Monitoring to Support Program Implementation**

The Draft Tentative Order requires a monitoring program that is disconnected to the needs of our Countywide Stormwater Management Program. While we agree that the current monitoring program under Order No. 00-108 can be improved to provide better information that leads improvements in the stormwater quality program, the Draft Monitoring Plan is resource intensive and misdirected. The Draft Monitoring Plan should be revised to appropriately identify water

quality problems and provide the Permittees with useful information to improve program effectiveness.

Throughout this process, the Permittees have worked with Regional Water Board staff to draft a Monitoring Plan that is designed to assess stormwater program effectiveness and aid in directing program activities to improve stormwater runoff. In fact, the outfall monitoring in the Draft Monitoring Plan is a direct result of the Permittees' commitments to conduct end-of-pipe monitoring to support program effectiveness assessment even though moving directly to end-of-pipe monitoring skips several steps outlined in the SMC's Model Monitoring Program for MS4s in Southern California. Nevertheless, the Permittees have agreed to outfall monitoring because it can provide useful programmatic information. Unfortunately, the current focus of the Draft Monitoring Plan is not to assess program effectiveness, but rather to determine compliance with numeric effluent limits characterized as MALs. (Draft Monitoring Plan at p. F-1.)

Furthermore, the Draft Monitoring Plan does not follow the same protocol used in characterizing urban runoff data from which the numeric MALs were derived. The standard to date has been to collect a flow weighted sample for the entire event (thus the name Event Mean Concentration)<sup>6</sup>. In California, these events typically last longer than 3 hours but are usually limited to 24 hours. However, the Draft Monitoring Plan requires runoff to be characterized by the first three hours of a storm (i.e., the 3 hour mean concentration). (Draft Monitoring Plan at p. F-2.) Given the fact that runoff quality is typically poorer in the first part of the storm,<sup>7</sup> the Ventura Program will be penalized by this different method for determining compliance with MALs. In other words the MALs are based on EMCs but the compliance will be based on 3 hour mean concentrations.<sup>8</sup>

Besides being inconsistent with the derivation of MALs, the requirement to characterize runoff based on the first 3 hours of a storm event is a monumental shift in the Ventura Program and its collection of data. Over the last 15 years of the Ventura Program, we have followed standard procedures for collecting EMCs for over 94 storm events. By switching to the 3 hour mean concentration, the Regional Water Board is in effect rendering all of our historical data useless. The Ventura Program's historical data is critical as it allows us to establish baselines and measure trends. Because of the importance associated with historical data, and more importantly, because it is not a true characterization of stormwater in California, we do not support the recommended Draft Monitoring Plan language that requires characterization of stormwater based on a 3 hour mean concentration.

**A. Requirement to Report Monitoring Results within 45-days is Unrealistic**

The Draft Monitoring Plan requires the Permittees to report monitoring results within 45-days of sample collection. (Draft Monitoring Plan at pp. F-3, F-6, F-10, F-12.) Such a requirement is unrealistic considering the turn-around time associated with most laboratory analyses. In fact,

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<sup>6</sup> Guidance Manual for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Storm Sewer Systems, USEPA, EPA 833-B-92-002, November 1992.

<sup>7</sup> First Flush Phenomenon Characterization, Caltrans, CTSW-RT-05-73-02.6, August 2005.

<sup>8</sup> Our comments here are intended to point the inconsistencies between the Regional Water Board's calculation of MALs and the determination of compliance with MALs. Our comments here should not be viewed as conceding to our opposition to the current calculation process used to derive MALs.

Regional Water Board staff should be well aware of this fact considering that it took longer than 45 days for a laboratory to report data that was requested by the Regional Water Board to be reported as soon as it was available. This is not unusual. In reality, there are few laboratories available that can perform the required analytical tests to the low levels as currently required for many constituents. Because there are only a handful of such laboratories available, they become seriously backlogged when it rains because every stormwater program in California is sending samples to same laboratories. To require data to be reviewed and converted into an electronic format in less time than it generally takes to get the preliminary results back from a contract laboratory is unrealistic. Undoubtedly, such a process would create constant confusion, an atmosphere where errors would occur frequently, and would put the Permittees in the position of constantly violating terms and conditions of the Draft Monitoring Plan. Instead of requiring that monitoring data be reported within 45 days, we recommend 90-days, which is consistent with other MS4 permits in California.

**B. Sampling Locations for Major Outfalls is Unclear**

The Draft Tentative Order includes two definitions for major outfalls. (Draft Tentative Order at p. 98.) These definitions do not provide the Permittees with direction for selecting representative major outfalls for monitoring. The Draft Monitoring Plan requires the representative outfalls to transport flows from representative land uses from each drainage area to sub-watersheds. (Draft Monitoring Plan p. F-4.) However, one definition of major outfall in the Draft Tentative Order conflicts with this requirement and defines major outfalls as industrial zoned areas. (Draft Tentative Order at p. 98.) Moreover, the language of "drainage areas" and "sub-watersheds" in the Draft Tentative Order to describe major outfall monitoring locations is also confusing and could be interpreted to mean one site per sub-watershed in each jurisdiction. (Draft Monitoring Plan at p. F-4.) If that interpretation is correct, we estimate that requirement would encompass over 200 sites. In contrast, the Permittees have proposed to monitor one site per Permittee's MS4 (a total of 11 sites) to assess program assessment. We recommend that the Draft Monitoring Plan be revised accordingly.

**C. Extensive Aquatic Toxicity Monitoring Requirements for Major Outfalls are Unnecessary**

The Draft Monitoring Plan requires that the major outfalls be monitored for toxicity. (Draft Monitoring Plan at p. F-7.) However, such monitoring is inappropriate because it fails to provide useful information regarding toxicity in the receiving water. Toxicity monitoring on the outfalls should only be required if toxicity has been identified in the receiving water. Otherwise, the information is unnecessary and an unnecessary expenditure.

**D. Requirement for Toxicity Reduction Evaluation (TRE) does not Reflect Variable Nature of Urban Runoff**

The Draft Monitoring Plan requires that a Toxicity Reduction Evaluation ("TRE") be performed when toxicity is identified through the Toxicity Identification Evaluation ("TIE"). (Draft Monitoring Plan at p. F-9.) This requirement is unclear as to its application to any one sample or to repeated events because the language in question requires a TRE when the "same pollutant or

class of pollutants is identified.” (Draft Monitoring Plan at p. F-9.) A TRE is a costly and detailed study that should only be undertaken if there is high probability of resolving a continuing problem. A single sample displaying toxicity likely could be due to an isolated incident that cannot be resolved through the TRE process. Requiring a TRE when successive samples display toxicity for the same pollutant or class of pollutants is appropriate; however, requiring a TRI when there is only one sample is not. We recommend that the language be revised to clearly indicate that the requirement for a TRE is triggered when there are successive samples that display toxicity.

**E. Pyrethroid Monitoring is Duplicative of Costly Efforts Required under the Calleguas Creek Toxicity TMDL**

The Draft Monitoring Plan would require extensive monitoring for pyrethroids. (Draft Monitoring Plan at p. F-11.) Such a requirement is duplicative because there already exists a comprehensive plan for a pyrethroid study in Calleguas Creek. The approved study is part of the Calleguas Creek Toxicity TMDL and it will determine if urban sources of pyrethroids are impacting receiving waters. Although the Draft Tentative Order acknowledges the existence of other efforts, it fails to not recognize scope, extent and value of efforts already underway in other programs. Thus, the Draft Tentative Order assumes that additional monitoring is necessary. In this case, additional pyrethroid monitoring will provide little added value as compared to the additional cost. Furthermore, the Draft Tentative Order’s reference to using other monitoring programs to satisfy this requirement provides no real relief because any other study must be done exactly as spelled out in the Draft Tentative Order, which includes poorly defined methods (e.g., “monitoring shall occur after sediment has settled within the waterbody”). (Draft Monitoring Plan at p. F-11.) In summary, the objective of determining impacts to receiving waters caused by pyrethroids will be satisfied by the Calleguas Creek TMDL study, and it is therefore unnecessary to require additional monitoring at this time in the Draft Tentative Permit and Draft Monitoring Plan.

**F. Misuse of California Toxics Rule Chronic Exposure Limits**

The Draft Monitoring Plan would require monitoring results to be compared to the California Toxics Rule (“CTR”) chronic exposure limits, which are based on a four-day exposure time frame. (Draft Monitoring Plan at pp. F-1, F-3, F-5, F-6.) Such a comparison is inappropriate for stormwater because rain events create short-term exposure that usually exists for less than 12 hours, which is not equivalent to the more continual long-term exposure for which the chronic CTR limits were created.

## VII. Miscellaneous Permit Provisions (TMDLs, Trash Excluders)

As you will see in our redline/strikeout of the Draft Tentative Order (see Attachment A), there are many fundamental issues of concern still outstanding. We have in our previous comments to the Regional Water Board provided background information and recommendations on a number of these issues. The following items, although not inclusive of all our comments, are highlighted to identify critical issues that are in addition to those discussed above:

### Definitions

**Maximum Extent Practicable:** The Draft Tentative Order attempts to redefine MEP as a “minimum” standard. Such an attempt is incorrect and inconsistent with the Clean Water Act and EPA’s efforts to define MEP. We have provided language that is consistent with the EPA efforts to define MEP.

**Construction:** The proposed definition for construction includes a definition for maintenance. The two terms in reality are different and therefore should as a practical matter be defined separately. We have provided suggestions to remedy this confusion.

**Water line and hydrant flushing.** Section A of Part 1 “Discharge prohibitions” of the Draft Tentative Order needs clarification for water line and fire hydrant flushing discharges. These types of releases should be allowed with BMPs until such time as a new General Permit for these activities is adopted. We have provided appropriate language for footnote #2 on p. 29 of the Draft Tentative Order in Attachment A.

**TMDLs.** The Draft Tentative Order addresses a number of our previous concerns and comments we expressed on the earlier draft orders. However, it still includes requirements that are inconsistent with approved TMDLs and Basin Plan amendments. We have provided language in Attachment A to address this inconsistency.

**Time schedules for program implementation.** Throughout the Draft Tentative Order we have suggested more time for implementation to reflect public agency funding processes.

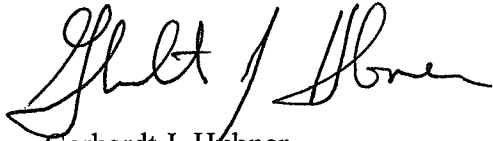
**Trash management alternatives.** Trash Management alternatives should be provided, such as a trash management program or allowing trash collection at the end of the drainage system but prior to the receiving water.

Again, we thank you for your time and effort in attempting to address some of our concerns, especially in the February 27 and 28 meetings here in Ventura. However, as we expressed previously, the Draft Tentative Order contains many new requirements that will excessively burden the Ventura Program and the Permittees. Unless there are fundamental revisions of the Draft Tentative Order, we find ourselves in the unenviable position of needing to oppose the proposed action as a whole. We sincerely hope that we can avoid such opposition at the public hearing before the Regional Water Board later this fall by continuing to work with you and your staff to address our concerns with the impact and implementation of the Draft Tentative Order in its current form.



To that end, we request a meeting with you prior to the July 10, 2008 Public Workshop to discuss and understand the rationale and lack of responsiveness to our previous comments, especially in regards to Municipal Action Levels. If you have any questions, please contact me at (805) 654-5051, or via email at [Gerhardt.Hubner@ventura.org](mailto:Gerhardt.Hubner@ventura.org)

Sincerely,



Gerhardt J. Hubner  
*On Behalf of the Entire  
Ventura Countywide  
Stormwater Management Program*

cc: LARWQCB Board Members  
Xavier Swamikannu, Senior - Storm Water Permitting, Los Angeles Regional Water  
Quality Control Board  
Ventura Countywide Program Permittees  
Jeff Pratt, Director, Ventura County Watershed Protection District

Attachments

- A MS4 Redline Draft Tentative Order  
MS4 Redline Monitoring Program
- B M. Walker 10/11/07 Memorandum regarding Comparison between Montgomery  
County (MD) and Ventura County (CA) Stormwater Management Programs
- C M. Barrett report "Treatment BMP Performance Standards", May 19, 2008
- D Hydromodification White Paper, April 19, 2008, Relationship of Sediment and  
Flow and Figure 1 - Ventura County New Development Flow Chart