



Ventura Countywide Stormwater Quality Management Program

Participating Agencies

March 4, 2020

Camarillo

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor

County of Ventura

P.O. Box 100
Sacramento, CA 95812-0100

Fillmore

Submitted via email to: commentletters@waterboards.ca.gov

Moorpark

Subject: Comments on A-2386, A-2477, A-2508 Proposed Order

Ojai

Dear Ms. Townsend:

Oxnard

The Ventura County Stormwater Quality Management Program (Program) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) Proposed Order *In the Matter of Review of Approval of Watershed Management Programs and an Enhanced Watershed Management Program Submitted Pursuant to Los Angeles Regional Water Quality Control Board Order R4-2012-0175, Order WQ 2020-XXXX* (Draft Order). In its Draft Order, the State Water Board reviews the Los Angeles Regional Water Quality Control Board's (Los Angeles Water Board) approval of various watershed plans (i.e., watershed management plans [WMPs] and enhanced watershed management plans [EWMPs]) developed under the municipal separate storm sewer system (MS4) permit for the Los Angeles County Flood Control District, the County of Los Angeles, and the 84 incorporated cities within Los Angeles County (hereinafter referred to as the "2012 Los Angeles MS4 Permit"). Within this context, the Draft Order makes significant findings with respect to the development and implementation of watershed plans within the Los Angeles Region and their use as alternative compliance pathways for meeting receiving water limitations (RWLs), Water Quality Based Effluent Limitations (WQBELs), and other TMDL-specific limitations.¹

Port Hueneme

San Buenaventura

Santa Paula

Simi Valley

Thousand Oaks

Ventura County
Watershed Protection
District

¹ Terminology referring to RWLs, WQBELs, and other TMDL-specific limitations are used consistent with the Draft Order, Footnote 7



The Ventura County MS4 Permittees have been working with the Los Angeles Water Board for over four years on the renewal of the 2010 Ventura MS4 Permit. Last year, the Los Angeles Water Board informed the Ventura County MS4 Permittees that they would be incorporated into a Regional Permit with the Los Angeles and Long Beach MS4 Permittees. The Regional Permit, as evidenced by the Working Proposal released in December 2019, is substantively the same as the 2012 Los Angeles MS4 Permit. The Program has significant concerns about the timing of the Draft Order and the challenges it has created in interpreting the potential implications for the Ventura County MS4 Permittees of being added to a Regional Permit. Given that the Los Angeles Water Board is actively working to renew the 2012 Los Angeles MS4 Permit, the Program requests that the State Water Board remove any specific permit language requirements and all language regarding the broader applicability of the decisions in this Draft Order and focus the Order on specific improvements that are needed for the WMPs/EWMP under review in the petitions. The Program is actively working with the Los Angeles Water Board on appropriate modifications to the 2012 Los Angeles MS4 Permit to create a Regional Permit that considers the characteristics of Ventura County MS4 Permittees which are distinct from Los Angeles County MS4 Permittees. The Program is concerned that if some of the key tenets outlined in the Order are interpreted as being required for all WMPs in the region moving forward, a significant level of effort would need to be expended by Ventura County MS4 Permittees that would provide minimal additional benefit. The Program is also concerned that the Draft Order creates risk that agreements and processes worked out with the Los Angeles Water Board staff can be negated and modified after significant implementation has occurred. In order to obtain the significant resources necessary to implement our stormwater programs, the decision-makers for the cities need to have comfort that implementation of approved WMPs constitutes compliance with specified permit requirements. As written, the Draft Order creates uncertainty about implementation that will make funding these WMPs more challenging.

The remainder of the comment letter is focused on discussing these concerns and providing specific suggested modifications to the Draft Order to address the concerns. The Program has significant concerns that the Draft Order will make the effort involved in developing Watershed Management Plans (WMPs) so significant that it will make the development of the WMPs cost prohibitive for the smaller cities and less developed watersheds in Ventura County.

- Comment #1 - the Program is concerned that the Draft Order improperly includes a discussion and findings related to consideration of costs that are not relevant to the issues before the State Water Board in this Draft Order.
- Comment #2 – the Program is concerned that the Draft Order appears to minimize the value of non-structural controls as an integral part of the WMPs and set requirements that are not applicable to structural controls in order to be deemed in compliance with RWLs. The concern is the new language that states if only non-structural controls are being implemented to achieve a milestone in WMPs, then a corresponding load reduction must also be demonstrated. This requirement is not established for structural controls. The Program has achieved significant improvements in water quality through non-structural controls and has concerns

that the proposed permit modifications imply that non-structural controls do not warrant deemed in compliance status unless a specific load reduction can be demonstrated, without allowing for adaptive management based on the monitoring results.

- The Program supports developing a WMP that clearly explains the analysis and decision making that led to the control measures and demonstrates that those control measures will achieve the permit requirements. However, the Program is concerned that the requirements outlined in the Draft Order will add unnecessary and burdensome analysis requirements that will not improve the decision making or the outcome of the WMP. In particular:
 - Comment #3 – the Draft Order includes requirements for the source assessment that will not improve the decision making or quality of the WMPs.
 - Comment #4 – the Draft Order includes reasonable assurance analysis (RAA) requirements that limit the use of tools that could be appropriate for the conditions in Ventura County.
- Comment #5 – The Program is concerned with the Draft Order’s characterization of “enforceable” provisions with respect to the WMPs and EWMPs.

In this context, we respectfully submit the following comments and suggestions on the Draft Order.

COMMENT #1: THE DRAFT ORDER’S DISCUSSION OF COST CONSIDERATIONS IS NOT DIRECTLY RELATED TO THE ISSUES BEING ADDRESSED BY THE DRAFT ORDER

Starting on page 19 of the Draft Order, there is a section regarding “Consideration of Costs”. As clearly stated in the Draft Order, this issue was not raised in the petitions. However, it appears that the Draft Order is being used inappropriately for the State Water Board to opine on issues that are currently in litigation.

First, within this section, the Draft Order makes broad findings and statements of declaration for which there is no evidence in the administrative record to support such findings. For example, the Draft Order makes the following blanket finding: “Despite this difficulty, the regional water boards went well beyond what is required of them by law to assess costs associated with their permits and assist municipalities in creating a manageable pathway to address water quality concerns.” (Draft Order, p. 21.) The administrative record before the State Water Board pertains to watershed management plans and enhanced watershed management plans as approved by the Los Angeles Water Board under Order No. R4-2012-0175 as amended by Order WQ 2015-0075. Other regional water board decisions are not within the ambit of the administrative record, and thus there is no evidentiary support for the Draft Order to make this finding.

Next, the Draft Order also fails to properly characterize the application of Water Code section 13241 to permit provisions that exceed the federal maximum extent practicable standard. In its reference to Water Code section 13241, the Draft Order references application of this section as it pertains to regional water board adoption of water quality standards. However, it ignores the statutory provisions of Water Code section 13263, which require consideration of such factors when adopting waste discharge requirements. The California Supreme Court held in *City of Burbank v. State Water Resources Control Board* that when an NPDES permit includes requirements that exceed federal standards, those requirements are subject to state law, which includes consideration of the 13241 factors. (*City of Burbank v. State Water Resources Control Board* (2005) 35 Cal. 4th 613, 627.) The Draft Order does not clearly call out the legal requirement as set forth by the California Supreme Court in the City of Burbank case. Rather, the Draft Order makes a vague reference to this requirement and instead inserts a lengthy footnote that cites to other judicial decisions. Unfortunately, the footnote overstates greatly the California Supreme Court's recent decision in *Department of Finance v. Commission on State Mandates*.² The Draft Order, in footnote 78, suggests that permitting regional boards have unfettered discretion to determine what is necessary to satisfy the federal permitting standards. (See Draft Order, footnote 78, p. 21.) In actuality, the court was merely noting that in a case that challenged a regional board's authority to impose specific permit conditions, a regional board's findings would be entitled to deference, and the challenging party would have the burden of demonstrating that the regional boards findings were not supported by substantial evidence or that the regional board had abused its discretion. (*Department of Finance v. Comm. on State Mandates, supra*, 1 Cal.5th at p. 768-769.) This was not the issue before the California Supreme Court and the footnote reference is misplaced as it is applied here in the Draft Order.

In this same sentence, the Draft Order then attempts to make a legal conclusion that the provisions in the Los Angeles permit are not more stringent than federal law. (See, p. 21, ["This requirement, however, does not apply when the requirements imposed by the regional board are not more stringent [than] that required by federal law, *as is the case here.*"], emphasis added.) We understand that this is the position of the water boards. However, this issue does not pertain to the substance of the issues being evaluated in the Draft Order. This Draft Order is about the substance of watershed management plans and enhanced watershed management plans, and thus the content of the Draft Order should be limited to such issues.

The Program is very interested in discussing issues regarding economics and cost considerations related to the development of MS4 Permits and would appreciate engaging in conversations on these issues with water board members and staff. However, the Program requests that the findings and discussions of cost and economics be removed from the Draft Order as they are outside the scope of the discussion.

² The citation to the *Department of Finance v. Commission on State Mandates* case as included in the Draft Order in footnote 78 contains a typographical error. The correct citation is *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749.

Recommendation:

- *Delete the entire section regarding the Consideration of Costs.*
- *In the alternative, delete the portion of the Draft Order that starts with “Despite” on page 21 through “underlying TMDL” on page 23.*

COMMENT #2: REVISE THE DRAFT ORDER TO CLEARLY VALUE AND SUPPORT THE USE OF NON-STRUCTURAL CONTROLS AS PART OF A WMP

The Draft Order appears to revise the 2012 Los Angeles MS4 Permit with respect to the deemed compliance status for interim milestones based solely on the implementation of non-structural controls (i.e., minimum control measures [MCMs] or source control measures). With this change, Permittees would be required to meet the dates and requirements for implementation of non-structural control measures and non-modeled structural controls, and would also need to demonstrate that they have actually achieved the assumed load reduction by the milestone date when the milestone is based entirely on non-structural controls. (Draft Order, page 59, emphasis added.)

This revision is significant and problematic for multiple reasons:

1. Coupling the implementation of non-structural control measures (as planned, justified, and committed to within the WMPs/EWMPs) with the achievement of a water quality milestone to demonstrate compliance is counter to the concept of the alternative compliance option afforded through Provision VI.C of the 2012 Los Angeles MS4 Permit and upheld by State Water Board Order WQ 2015-0075.
2. From a technical perspective, the variability of pollutant concentrations detected in stormwater makes it challenging to measure a specific, small change in water quality (i.e., 5-10%) over the relatively short period of time that most WMPs/EWMPs used to justify their deemed in compliance status using non-structural control measures. The requirement to demonstrate a specific load reduction is counter to the adaptive management approach envisioned by the WMPs.
3. Considering these two key issues, the Draft Order implies that non-structural control measures have different requirements than structural controls and are of less value and importance than structural control efforts.

Historically, Permittees have relied primarily on the prescriptive implementation of non-structural control measures to improve water quality and comply with their permits. With the new option to implement watershed-based approaches in the 2012 Los Angeles MS4 Permit, the “WMP/EWMP provisions allow Permittees to choose an integrated, watershed-based approach” (Draft Order, page 6) to address water quality challenges in their watersheds. Permittees that selected a WMP/EWMP based approach did so with the understanding that this included an alternative compliance pathway for them to be deemed in compliance with RWLs, WQBELs, and TMDL-specific limitations through

implementation of their WMP/EWMP. The WMPs were developed around the implementation of both non-structural and structural approaches, including MCMs, source control programs, green infrastructure, and regional treatment. Appropriate milestones were developed and approved with the understanding that water quality monitoring results would support implementation efforts and adaptive management, especially with respect to interim milestones, and water quality results alone would not be the determining factor in compliance.

The Program anticipates that if WMPs are developed for Ventura County, a phased approach to implementation would be utilized, consistent with the approach that has been taken to date in implementing TMDLs. The WMPs would likely start with implementation of non-structural control measures that consist of source control efforts and enhanced MCM programs while structural controls are sited, designed, permitted, and constructed as necessary. Non-structural controls combined with structural control measures in targeted areas have proved successful in Ventura County, as demonstrated by delistings and findings of non-impairment for several waterbodies where actions to address TMDL requirements have been implemented. The Program anticipates that a combination of non-structural and structural controls will be needed to most cost effectively address remaining water quality challenges in the County and in some cases non-structural controls may be sufficient. The previous history of success and estimated effectiveness of these programs can be utilized in developing the WMPs to provide reasonable assurance that the non-structural control measures will be successful and justify the "deemed in compliance" status is warranted. Where programs are not effective, they will be modified through an adaptive management process, ensuring the implementation of improved non-structural control measures as the WMP progresses. (See, e.g., 2012 Los Angeles MS4 Permit Provision VI.C.8.) Requiring Permittees to demonstrate load reductions concurrent with the implementation of non-structural controls in their WMPs adds requirements for the use of non-structural controls for attaining milestones that are not included for structural controls. For the interim requirements in the 2012 Los Angeles MS4 Permit, it is our understanding that the WMP provides a pathway for implementing controls that are anticipated to achieve water quality improvements, evaluate water quality data to see if the anticipated progress has been made, and modify the control measures based on the results with the ultimate goal of meeting the final receiving water limitations. This understanding is affirmed in the Draft Order on page 58:

"In general, therefore, if an interim load reduction target is proposed to be met by a series of actions, compliance is determined by implementation of the actions themselves, rather than achievement of the numeric target. If a Permittee implements the actions but fails to meet the interim target, it must reevaluate its assumptions and propose a new target, if needed, and/or additional BMPs to get back on a path to meeting final receiving water limitations, and WQBELs, and other TMDL-specific limitations."

The Draft Order effectively removes this process for milestones based solely on non-structural controls. The proposed permit modifications appear to retroactively remove the deemed in compliance status for interim milestones based solely on non-structural controls if the monitoring data do not fully meet the anticipated load reductions. This approach seems to directly contradict the intention of the alternative compliance pathway as outlined in the State Water Board Order 2015-0075 to allow “permittees appropriate time to come into compliance with receiving water limitations without being in violation of the receiving water limitations during full implementation of the compliance alternative.”

This requirement is concerning because the inherent variability of pollutant concentrations in stormwater makes it difficult to demonstrate the relatively small changes in water quality that are attributed to non-structural controls (i.e., 5-10% as reflected in the interim goals referenced in the Draft Order), whether measured in the receiving waters or at MS4 outfalls without a significant amount of monitoring data. The interim goals that are expected to be reliant solely on non-structural controls are generally relatively short-term goals (i.e., 5-year permit term goals), and it may not be feasible to demonstrate a 5-10% load reduction with statistical confidence based on current monitoring programs and techniques. The modified permit language outlined in the Draft Order does not appear to consider the technical feasibility of demonstrating the change. Additionally, the permit language appears to remove deemed in compliance status for Permittees that achieved a slightly lower load reduction than expected is achieved (e.g., 8% instead of 10%) and that then effectively followed the process and modified their non-structural programs to achieve additional load reductions.

Further contributing to the impression that the Draft Order does not value the use of non-structural controls in the WMP, the Draft Order includes proposed language modifications for the 2012 Los Angeles MS4 Permit that could be interpreted to imply that deemed in compliance applies only to structural controls, unless achievement of estimated load reductions as milestones can be demonstrated. The Draft Order also seems to indicate that the deemed in compliance status is primarily to support regional and watershed-based projects. (See, e.g., Draft Order at p. 58, [*The purpose of the deemed compliance provisions is to encourage significant investment in collaborative regional- and watershed-based BMP implementation...*]) This position fails to recognize the practical reality of time needed for multi-year source control activities that will result in the prevention of pollutants entering the MS4 and receiving water systems and resulting implementation timeframes (e.g., SB346 addressing copper in brake pads or urban pesticide amendments). It also fails to adequately understand that during the period of time that is needed to develop and implement structural controls, non-structural controls are important for addressing ongoing water quality issues.

Some portions of the Draft Order seem to indicate that if the non-structural programs were included in the RAA, then deemed in compliance status may be possible, but the proposed permit modifications do not support this interpretation. If the true concern is the way in which non-structural controls are included in the RAA, Permittees should be able

to justify the model inputs or provide a different type of quantitative analysis more appropriate to non-structural control measures to show that the control measures are effective and sufficient to get deemed in compliance status.

In summary, over the course of 30+ years of program implementation, stormwater practitioners recognize that non-structural approaches are more cost-effective for some pollutants, and in some cases, are the only way to ensure that impacts from certain pollutants are effectively addressed. Treatment may not always be feasible for a given pollutant and it may be more prudent to take a preventative approach instead of a treatment approach. As proposed, the Draft Order appears to minimize the role of these programs in stormwater management and negate the option to address lower than anticipated load reductions during the implementation period of the WMP through adaptively managing and improving our programs. Adding a requirement to quantify and achieve load reductions associated with non-structural programs in order to be deemed in compliance may effectively dis-incentivize non-structural approaches and negate a key tenet of the alternative compliance pathways to provide time for Permittees to come into compliance with RWLs. This could also result in permittees investing primarily in structural controls to try and treat pollutants when non-structural controls could provide more benefit by preventing the pollution from occurring in the first place. The Draft Order needs to be revised to clearly value non-structural programs as part of larger watershed approaches to address water quality challenges and clearly allow for deemed in compliance status for non-structural controls, if they are included in the RAA. Additionally, the Draft Order should note that the is specific to the 2012 Los Angeles MS4 Permit requirements and can be modified in the Regional Permit.

Recommendation:

- *Delete proposed language for the 2012 Los Angeles MS4 Permit for Parts VI.C.2.b.i and VI.C.3.a.i and require Permittees that are relying on non-structural controls for milestones to demonstrate that the non-structural controls were included in the RAA. Alternatively, if the proposed language is not removed, make the following modifications:*

VI.C.2.b.i.

- i. When the requirements for achievement of a Part VI.C.5.b.iv.(5)(c) interim compliance deadline consist entirely of non-structural controls and/or non modeled structural controls, Permittees must not only demonstrate implementation of the controls, but also actual achievement of any applicable water-quality based milestones, unless otherwise addressed in the RAA.*

VI.C.3.a.i.

- i. When the requirements for achievement of a Part VI.C.5.b.iv.(5)(a) or (b) interim compliance deadline consist*

entirely of non-structural controls and/or non-modeled structural controls, Permittees must not only demonstrate implementation of the controls, but also actual achievement of any applicable water-quality based milestones, unless otherwise addressed in the RAA.

COMMENT #3: REMOVE SOURCE ASSESSMENT DATA REQUIREMENTS THAT DO NOT SUPPORT IMPROVED DECISION-MAKING FOR THE WMP

The Program is supportive of the Draft Order's focus on transparency and clarity in the development of the WMPs/EWMPs and understands the need for Permittees to "show their work." A thoughtful and transparent process is necessary to ensure integrity with alternative compliance pathways. However, the need for such information needs to be balanced against the value of the information being provided. Additional resources spent on reports and justification may in fact direct needed resources away from projects that are designed to directly support improvements in water quality and unnecessarily increase the cost and burden of developing a WMP. The proposed requirements for source assessments could result in the development of additional documentation with little benefit to the planning effort. The Program has been working with the Los Angeles Water Board to modify the source assessment requirements for the Regional Permit to reflect only the information necessary for effective decision-making and we are concerned that the Draft Order would negate those efforts.

The Draft Order makes three key assertions with respect to source assessments:

1. The Los Angeles Water Board and its Executive Officer should use their oversight role to ensure that the source assessments are meaningful components of the WMPs/EWMPs. (Draft Order, p. 37.)
2. Permittees often stopped short of explaining how the data was considered and incorporated into the watershed planning processes; the Draft Order indicates that how the data was considered and incorporated into the planning processes is a necessary part of WMP/EWMP development.
3. The Draft Order states that the use of "relevant, available" data should be the standard applied to WMP/EWMP development across the State.

Source assessments within the context of WMPs/EWMPs are required to identify pollutant sources in discharges to the MS4 and determine whether discharges from the MS4 may be causing or contributing to exceedances of limitations in receiving waters.³ As part of the source assessment process, Permittees are required to consider various types of data including findings related to minimum control measure (MCM) programs, TMDL source investigations, watershed model results, monitoring, locations of MS4s, and structural controls. The 2012 Los Angeles MS4 Permit is not prescriptive in how the data is used only that it shall be considered as part of the water quality prioritization process. The Draft Order asserts that the Permittees must justify why certain data sets were not

³ Los Angeles MS4 Permit Provision VI.C.5.a.iii

used. Rather than requiring further explanation as to how or why data was not used in the analysis, the Program believes that it is more efficient to explain what data was used and how it was used in the development of the WMPs/EWMP. This avoids using limited resources in explaining why certain types of data are not relevant even if available.

Next, source assessments should be tailored to the needs of the watershed plan. The Program has numerous existing resources and plans that have evaluated sources and the nature of urban development in Ventura County does not result in significant changes in sources for most areas. To reduce cost and effort for developing the WMPs, the Program intends to use existing information as a starting point. Having to gather all “relevant” and “available” data, evaluate it, and recreate the existing source assessments within the WMPs would not provide any significant benefit to the planning process but could add significant costs.

Different types of data can provide different value to the WMP development process and the Permittees should be able to determine which data are useful to informing the plan. For example, the Program anticipates examining data collected at MS4 outfalls in conjunction with analogous receiving water data to help determine whether the MS4 is causing or contributing to water quality priorities. These data can feed directly into model development, calibration, and validation. This step in the development of the WMPs will provide valuable updates to existing source assessments and be a meaningful component of WMP development.

With respect to other data that the Draft Order considers to be “relevant” and “available” (e.g., ICID information, various inventories, and other data sets), the value of gathering, compiling, and analyzing the data will be dependent on the approach that the Program takes to developing control measures for the WMP. For example, if a Permittee would like to rely significantly on non-structural controls in the WMP, this data may be critical to identifying the most effective non-structural controls and justifying their effectiveness as part of the RAA. However, if the watershed is committed to constructing a regional retention basin, the sources of pollutants in the upstream drainage areas are not as relevant, as long as the flows are captured and treated by the basin. In this case, these types of data are less relevant to the planning process, and the effort involved in gathering and analyzing the data would not contribute meaningfully to the WMP development. In summary, the level of effort put into a source assessment should match the value that it brings to the watershed.

Given the level of variable level of effort and data analysis that could be useful for developing source assessments that are “meaningful components of the WMPs”, as noted in the Draft Order, the language in the Draft Order should focus on the appropriate documentation of and justification for the control measures in the WMPs and avoid requiring analysis and justification that does not ultimately lead to providing support for the decisions in the plan.

Recommendation:

- *Articulate within the Draft Order that watershed source assessments should require clear documentation of the source information reviewed, what information was used, and how the information was used in the development of the watershed plan. The explanation should be affirmative (i.e., what information was used and why it is sufficient to appropriately support the selection of control measures). In particular, modify the language in the first paragraph, first and second sentences of page 36 as follows:*

“that means describing how the source assessment was actually done rather than just what was not considered, and it requires an explanation of how the source assessment was utilized in the development of the watershed plan. for why the WMP Group chose to disregard any “relevant, available” data. ¹⁷³ For each unused piece of relevant data, the WMP Group must submit an explanation.

- *Additionally, modify the language in the first paragraph, seventh sentence of page 37 as follows:*

“We expect more out of the source assessments than a summary of the information available – for the source assessment to be a meaningful exercise, Permittees must show that how the source assessment and the information they considered was used in the development of the WMP or explain why it was not used.”

- *Remove language in the Draft Order (page 36) referencing the use of “relevant, available” data as the standard to be used throughout the State for development of source assessments.*

COMMENT #4: MODIFY THE DISCUSSION REGARDING THE USE OF THE LIMITING POLLUTANT APPROACH WITHIN THE REASONABLE ASSURANCE ANALYSIS

The concept of a Reasonable Assurance Analysis (RAA) was introduced in the context of WMP/EWMP development under the 2012 Los Angeles MS4 Permit to provide a mechanism to quantitatively demonstrate that if a watershed implements a suite of control measures, the control measures will be sufficient to ensure that receiving water limitations, WQBELs, and TMDL-specific limitations are met. To provide consistency in how the modeling was performed to demonstrate reasonable assurance, stakeholders in the Los Angeles Region developed RAA guidelines in 2014. The Draft Order acknowledges⁴ that the limiting pollutant concept originated in the Los Angeles Water

⁴ Draft Order, page 40.

Board's RAA Guidelines.⁵ The guidelines state that "[i]n some cases, it may be possible to identify a 'limiting pollutant' that can be used as the focus of the analysis – i.e., to estimate necessary pollutant reductions and to analyze the BMP scenario to achieve the needed reduction – which will result in achievement of needed reductions in other pollutants. Where this approach is taken, adequate justification must be provided". (RAA Guidelines, page 2.)

The Program's primary concern with the Draft Order is that it appears to significantly increase the modeling effort that could be required by Ventura County MS4 permittees to meet the RAA requirements. The Program has been actively working with the Los Angeles Water Board to discuss the appropriate application of the RAA requirements in Ventura County where two of the three major watersheds are less than 10% urbanized and multiple other pollutant sources (e.g., agriculture and wastewater treatment plants) contribute to the receiving water objective exceedances. The Draft Order appears to place requirements and constraints on the RAA approach in the Los Angeles Region that could add significant cost and effort to the analysis. The Program is concerned that the Draft Order would set requirements that would remove the flexibility for the Ventura County watersheds to identify the appropriate analysis tools to use and prescribe how the tools should be used. The selection and use of RAA tools should be determined by watershed stakeholders on a case-by-case basis, so long as the end goal of demonstrating that control measures will achieve water quality endpoints remains. Ultimately, the level of effort, the tools used, and how the tools are used should be reflective of the data available and the need for planning and should focus on identifying actions to improve water quality instead of making the best tools.

Acknowledging that the RAA needs to be robust and supportive of implementation, the RAA and the approach for the limiting pollutant analysis should be aligned with the needs of the watershed (i.e., what needs to be demonstrated) and the control measures being evaluated. For example, if the watershed is committed to focusing primarily on structural controls, a limiting pollutant approach may be appropriate since structural controls will capture and treat a variety of pollutants. However, if the compliance approach is intended to focus primarily on MCMs and source control efforts, the limiting pollutant approach as outlined in the Draft Order (i.e., limited to pollutants within the same class) may be warranted.

Support for the option to have different levels of RAA analysis and tools to meet different needs is highlighted in USEPA Region 9's RAA Guidance⁶. For example, there is a section that discusses how the size of the municipality matters when selecting the RAA tool. For larger communities, a more complex tool may be needed to address the larger

⁵ California Regional Water Quality Control Board, Los Angeles Region. *Guidelines for Conducting Reasonable Assurance Analysis in a Watershed Management Program, including an Enhanced Watershed Management Program, March 25, 2014.*

⁶ USEPA Region 9 and Paradigm, *Developing Reasonable Assurance: A Guide to Performing Model-Based Analysis to Support Municipal Stormwater Program Planning*, February 2017.

number of sources and range of BMPs to be evaluated. However, “For small communities or areas with no specific pollutants of concern or TMDLs, hydrology or pollutant loading may be highly predictable or understood based on monitoring data. ... In this situation, a simple analytical method may be determined sufficient to support planning efforts.” In order for WMP development to be viable for some of the smaller communities in Ventura County, the ability to use simple analytical methods that directly support planning efforts is critical.

The Program is committed to working with the Los Angeles Water Board to ensure that the Regional Permit RAA requirements can accommodate the different conditions and level of RAA analysis that is appropriate for Ventura County. The Program requests that the Draft Order be clear that the discussion regarding the RAA is specific to the 2012 Los Angeles MS4 permit and that the requirements can be modified in future iterations of the permit as long as the modifications are consistent with State Water Board Order 2015-0075.

Recommendation:

- *The Draft Order must be clear in its intent to address concerns related to the limiting pollutant approach(es) that are specific to the interpretation of the 2012 Los Angeles MS4 Permit and may be modified in future iterations of the permit.*
- *The Draft Order should include language acknowledging that where the RAA includes sufficient documentation to demonstrate that control measures address multiple pollutants, then the limiting pollutant approach is valid.*

COMMENT #5: CLARIFY THAT FAILURE TO MEET COMMITMENTS IN A WMP OR EWMP IS NOT A PERMIT VIOLATION

Since development and implementation of a WMP or EWMP is an optional compliance mechanism, failure to implement commitments described in the WMP or EWMP does not constitute a violation of the Permit. The Draft Order states that “WMPs and EWMPs must in particular be clear as to which components constitute definite, enforceable benchmarks, such that failure to achieve those components means that Permittees are *not* fully implementing the program and must instead comply immediately with receiving water limitations and WQBELs and other TMDL-specific limitations.” This is consistent with our understanding of the 2012 Los Angeles MS4 Permit in that once the Regional Water Board determines that the Permittees have lost their deemed compliance status through a failure to implement their plans or request additional time or plan modifications, they must comply with the baseline permit requirements, including MCMs, receiving water limitations, WQBELs, and TMDL-specific limitations.

However, the Draft Order is confusing in that it references, in many places “enforceable” benchmarks, milestones, and commitments (pages 3-5, 7, 8, 9, 10, 26, 29, 30, and 35) that need to be built into the WMPs/EWMPs. For example, Section 1 references

enforceable milestones in BMP implementation tables/schedules. Later in the Source Assessments Section, the Draft Order references “enforceable commitments to obtaining and incorporating new relevant information.” In these cases, the term “enforceable” is indicative of a violation and non-compliance with the Permit. This appears to be a mischaracterization, suggesting that the WMP contains requirements that are in and of themselves enforceable Permit violations. This mischaracterization is stated throughout the remainder of the Draft Order.

Recommendation:

- *Rather than using the term “enforceable” in the context of a WMP/EWMP, the term should be deleted throughout and the Draft Order should be clear that failure to comply with a benchmark or milestone designated within a WMP/EWMP is not in and of itself an enforceable compliance issue.*

COMMENT #6 – ADDITIONAL ISSUES OF POTENTIAL CONCERN

In addition to the major comments provided above, the Draft Order contains a number of statements that appear to change the interpretation of permit conditions without significant justification or consideration of the intention of the 2012 Los Angeles MS4 Permit provisions and could be interpreted as establishing precedents for Ventura County MS4 Permittees depending on the conditions in the Regional Permit. The inclusion of these statements, some examples of which are provided in this comment, contribute the confusion created by this Draft Order for the Program and further justify the overall request by the Program to delay and limit the scope of this Order.

The first example is included on page 48 of the Draft Order and appears to establish a requirement that schedules established in WMPs for 303(d) listed constituents that are not in the same class as a TMDL can only be subsequently changed if a TMDL is adopted. This is in direct contrast to language in the 2012 Los Angeles MS4 Permit and language in other areas of the Draft Order that allow for schedule modifications if justified in accordance with the requirements in the Permit.

“Permittees should propose a unique control measure schedule for each pollutant or class of pollutants that fall into these categories. As discussed in section II.B.2.c of this order, where a control measure schedule is proposed for any 303(d)-listed pollutant not in the same class as a TMDL with a final milestone beyond the term of this order, that milestone date may only be changed consistent with the terms of a subsequently adopted TMDL.”

On page 121, the Draft Order describes the precedential nature of the order. However, this section only discusses the applicability of the Draft Order to permittees implementing WMPs/EWMPs under the “Los Angeles MS4 Order” and “areas outside of the Los

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Angeles Region.” Ventura County MS4 Permittees are neither under the Los Angeles MS4 Order nor outside the Los Angeles Region.

On page 125, the Draft Order states “The Los Angeles Water Board is directed to ensure that all other approved WMPs and EWMPs, including those that may be approved in the future and future iterations of the WMPs and EWMPs addressed by this order, conform to this order’s requirements.”

The examples above illustrate the confusion created by the Draft Order for the Program and the potential new requirements that could be unintentionally applied to Ventura County MS4 Permittees if the Draft Order is adopted as written. As noted in the introduction, the Program requests that the State Water Board remove any specific permit language requirements and all language regarding broader applicability of the decisions in this Draft Order and focus the Order on specific improvements that are needed for the WMPs/EWMP under review in the petitions, some examples of which have been identified in the examples above.

Thank you for your time and consideration of these comments. If you have questions or need additional information, please contact me at 805-654-3942 or Arne.Anselm@Ventura.org.

Sincerely,



Arne Anselm, Chair

On Behalf of the Ventura Countywide Stormwater Quality Management Committee

Cc: Renee Purdy – LA RWQCB
Ventura County Stormwater Quality Management Committee