



CITY OF
Palos Verdes Estates

OFFICE OF
THE CITY MANAGER

August 15, 2013

Emel G. Wadhvani
California State Water Resources Control Board
Senior Staff Counsel
P.O.Box 100
Sacramento, CA 95812-0100
Via email: ewadhvani@waterboards.ca.gov

Subject: SWRCB/OCC FILE A-2236(A) THROUGH (KK) COMMENTS IN RESPONSE TO QUESTIONS POSED BY THE STATE WATER RESOURCES CONTROL BOARD CONCERNING RECEIVING WATER LIMITATIONS AS ADDRESSED IN ORDER NO. R4-2012-0175 – WASTE DISCHARGE REQUIREMENTS FOR MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4) DISCHARGES WITHIN THE COASTAL WATERSHEDS OF LOS ANGELES COUNTY, EXCEPT THOSE DISCHARGES ORIGINATING FROM THE CITY OF LONG BEACH MS4

Dear Ms. Wadhvani:

The City of Palos Verdes Estates (City) appreciates the opportunity to provide comments on the request by the State Water Resources Control Board (State Water Board) in its July 8, 2013 announcement with respect to the petitions received on Order No. R4-2012-0175 (LA MS4 Permit) which was further clarified in the subsequent announcement issued on July 29, 2013. Specifically, the State Water Board in its July 8, 2013 announcement requested comment as follows:

The Los Angeles MS4 Permit appears to provide a compliance alternative to the State Water Board's precedential receiving water limitations for MS4s. Under the Los Angeles MS4 Permit, dischargers that are in compliance with the requirements and milestones of an approved watershed management program/enhanced watershed management program are also generally deemed to be in compliance with the Permit's receiving water limitations. All interested persons are invited to submit comments within 30 days of the date of this letter,¹ addressing the following questions:

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

¹ This deadline was later extended to August 15, 2013 at 12 noon, in a letter dated July 15, 2013.

In its July 29, 2013 announcement, the State Water Board further clarified that in addition to the questions above, it is *generally seeking all information that would assist it in determining whether these approaches constitute appropriate revisions or additions to the existing receiving water limitations language in MS4 Permits.*

City staff have been concerned and continues to be concerned with the Receiving Water Limitations language in municipal stormwater permits. This language is of great importance to municipalities because of decisions by the U.S. Ninth Circuit Court in *Natural Resources Defense Council, Inc. et al. v. County of Los Angeles et al.* Most recently, the Ninth Circuit interpreted the language in the previous NPDES permit, which is similar to the language in the current permit,² to impose liability on the County of Los Angeles for violations of the permit.³ The Ninth Circuit distinguished the language in the permit that a Permittee's responsibility to "discharge[s] for which it is the operator" "applies to the appropriate remedy for Permit violations, not to liability for those violations." This decision places municipalities in an untenable and vulnerable position.

City staff supports the California Stormwater Quality Association (CASQA) comment letter and proposed RWL language which seeks to address the problem of Receiving Water Limitations language in MS4 Permits on a statewide basis. The Enhanced Watershed Management Program (EWMP) approach in the 2012 LA MS4 permit provides a means to better define what is expected of the iterative process (e.g., through the "reasonable assurance analysis"). This approach is also consistent with, and serves as an example of, the Strategic Compliance Program approach recommended by CASQA in their comment letter and proposed language.

The 2012 LA MS4 Permit EWMP approach, which incorporates "design storms" (e.g., the 85th percentile 24-hour event and the 1-year/1-hour storm for trash control) and allows for a compliance schedule, provides greater certainty and a clear objective for municipalities seeking to define the scope of their technical and fiscal responsibilities under the MS4 Permit. Palos Verdes Estates must utilize and manage its limited fiscal resources wisely and would much prefer to deploy those resources for water quality objectives appropriate to this community and other essential public services rather than in the defense of third party actions under the federal Clean Water Act's citizen suit provision. Compliance with water quality standards will require significant investment of our scarce resources which must be funded over time in the form of capital improvements, operation and maintenance, as well as institutional programs; it will be a major impact to our budget.

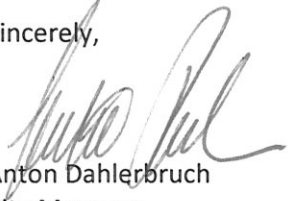
The EWMP approach contained in the Los Angeles MS4 Permit is an appropriate means for Permittees to comply with receiving water limitations for MS4 discharges. The City wants to continue to work with Regional Board staff to protect and restore the quality of our valuable water resources in a manner that is most effective and allows us to prioritize water quality objectives for deployment of our limited

² The current language reads "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance" and includes a reference to 40 CFR Section 122.26(a)(3)(vi), which states that a Permittee is only responsible for discharges of storm water and non-storm water from the MS4 for which it is an owner or operator.

³ *Natural Resources Defense Council, Inc. et al. v. County of Los Angeles et al.*, No. CV 10-56017, at 25 (9th Cir. Aug. 8, 2013) (emphasis in original).

municipal resources in a way that addresses the most pressing water quality priorities for the benefit of the public taxpayer.

Sincerely,



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